
(1991) 07 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No. 185 of 1991

Elar Fashions Ltd.

APPELLANT

Vs

State of Goa and Another

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 10(3), 18, 2, 24(1)

Citation : (1992) 1 BomCR 479

Hon'ble Judges : H.W. Dhabe, J; E.S. Da Silva, J

Bench : Division Bench

Advocate : S.R. Rivorkar, for the Appellant; G.U. Bhobe, Government Advocate for respondent No. 1 and F. Rebello, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—The petitioner employer has challenged in this writ petition the reference made by the State Government to the Industrial Tribunal in regard to the dispute about the demands of the workers of the petitioner Factory raised by the respondent No. 2 Union which according to the petitioner is a general Union of workers, in the sense that it is not meant exclusively for the workers in its factory. The order of the State Government making the above reference is dated 11-3-1991 and the same is issued in the exercise of its power u/s 10(1)(d) of the Industrial Disputes Act, 1947 (for short "the Act"). The petitioner has also challenged the order of the State Government dated 28-3-1991 prohibiting continuance of strike or lock-out in connection with the aforesaid dispute which may be in existence on the date of the reference which order is issued in the exercise of the power conferred upon it u/s 10(3) of the Act.

2. The learned Counsel appearing for the petitioner has elaborately taken us through the facts of the case and has urged the following contentions in assailing the order of reference dated 11-3-1991 :---

(i) The dispute referred by the State Government is stale,

(ii) No industrial dispute exists since there is a settlement in respect of the subject- matter of the Industrial dispute between the petitioner employer and another Union by name Elar Fashions Employees" Union which, according to the petitioner is working solely in its establishment.

(iii) The reference is not competent under Clause (d) of section 10(1) of the Act.

(iv) The dispute is not shown to be supported by the workmen working in the factory of the petitioner employer when the respondent No. 2 Union passed a resolution in the meeting of its Executive Committee to sponsor the dispute of the workman in the factory of the petitioner employer.

3. It is well settled that the making of reference u/s 10(1) of the Act is an administrative act and if the pre-conditions therein viz. any industrial dispute exists or is apprehended are satisfied then the appropriate Government can exercise its discretion to make a reference of the industrial dispute u/s 10(1) of the Act. See *State of Madras Vs. C.P. Sarathy and Another*, . It is also well settled that the question whether the references made to the Tribunal is competent or not or what referred to the Tribunal an industrial dispute or not which and/or the matter connected therewith or relevant to it alone the State Government can refer u/s 10(1) of the Act can be decided by the Tribunal as it raises the question of its jurisdiction. As regards the grounds of challenge raised by the petitioner to the reference made by the State Government, it is amply clear that it involves determination of disputed questions of fact and law for which an appropriate forum is the Tribunal to which the reference is made and not the High Court exercising extra-ordinary discretionary Jurisdiction under Article 226 of the Constitution.

4. As regards the first question whether the dispute raised by the respondent No. 2 Union is a stale dispute, the submission on behalf of the petitioner is that a charter of demands was given by respondent No. 2 Union as far back as on 30-10-1988 while reference was made in regard to the same on 28-3-1991. Further, according to the learned Counsel for the petitioner the above charter of demands was never pursued by the respondent No. 2 Union with the management before the above reference was made and therefore it had assumed that it was withdrawn. However, according to the learned Counsel appearing for the respondent No. 2, as the petitioner employer did not reply, much less accede to the charter of demands given to it by the respondent No. 2 Union on 30-10-1988, it pursued the matter with the Labour Commissioner and consequently the conciliation proceedings were initiated in regard to its aforesaid charter of demands in which it is only on 10-11-1990 that the employer appeared before the Conciliation Officer and submitted that there was a settlement of the dispute about the demands of the workers which according to the respondent No. 2 Union was not in relation to its demands and not with it.

5. According to the learned Counsel for the respondent No. 2, the Conciliation Officer thereafter submitted his report to the Government whereafter it made the

instant reference on 11-3-1991. The question whether the reference is thus stale or not, particularly from the point of view whether an industrial dispute regarding the charter of demands given by the respondent No. 2 exists on the date of reference or not, and whether inspite of the fact of its being delayed the relief can or should be granted or not and if so, to what extent, are the matters which are to be considered by the Tribunal on the basis of all the facts and circumstances before it. The said question cannot therefore appropriately be gone into within the jurisdiction of this Court under Article 226 of the Constitution.

6. The next question is whether there is a settlement of dispute in relation to the demands which are the subject matter of the present reference. The submission on behalf of the petitioner in that there is a settlement arrived at between Elar Fashions Employees' Union and the petitioner employer on 25-4-1990 and the benefits of the said settlement are given not only to the employees who are the members of the aforesaid Union but to all the employees of the petitioner thus including its non-members also. The submission is that in view of the said settlement the industrial dispute in regard to the matters covered by the said settlement cannot be raised and does not survive for consideration. It is again well settled that unless there is a settlement arrived at during the conciliation proceedings such a settlement within the meaning of section 2(p) of the Act is not binding upon all the workman as is clear from the provisions of section 18 of the Act. It is not in dispute that the settlement in question dated 25-4-1990 is not arrived at during the conciliation proceedings. The said settlement dated 25-4-1990 is therefore, binding u/s 18 of the Act only upon the members of the Union which entered into the said settlement with the petitioner outside the conciliation proceedings.

6A. It is therefore, open to the employees who are not the members of the said Union to raise through another Union of which they are the members an industrial dispute in regard to their demands about the same conditions of service upon which there is settlement which industrial dispute thus raised can be referred for adjudication of the Industrial Tribunal u/s 10(1) of the Act. It is so even if the Union entering into agreement is a majority Union and the Union raising an industrial dispute is a minority Union. See *Tata Chemicals Ltd. v. Workman* (1978) L.L.C. 637. The Tribunal can, therefore, examine in such reference the question whether the said settlement is fair and just to the employees or not.

7. The learned Counsel for the petitioner has in this regard also submitted before us that even the formal requirements of section 2(p) read with the relevant rules in that regard framed under the Act, such sending the copies of the settlement to the Officer authorised by the State Government in this behalf and the Conciliation Officer are not complied with by the parties to the aforesaid settlement dated 25-4-1990 so as to be a lawful settlement within the meaning of section 2(p) of the Act binding u/s 18 of Act upon the parties to the same i.e.

the petitioner-employer and the employees who are the members of the Elar Fashions Employees" Union. This is again a matter which can properly be considered by the Tribunal to whom the reference is made.

8. As regards the question whether the reference made under Clause (d) of section 10(1) of the Act is competent or not, it is well settled that the reference should be liberally construed and that the wording of the reference which may not be happily worded is not decisive in the matter of the tenability of the reference and the Tribunal can look to the pleadings of the parties to ascertain the exact nature of dispute between them and thus determine the scope of the reference. See in this regard the judgment of this Court in *Sheshrao v. Presiding Officer*, (1990) 2 C.L.R. 726 and the judgments of the Supreme Court referred to therein. The learned Counsel for the petitioner has expressed apprehension that the manner in which the reference is framed casts a burden upon the employer on the question as to why it has refused to concede the demands made by the respondent No. 2 Union. As pointed out above, after the Tribunal construes the reference and determine exact nature of dispute between the parties, even though the reference may not be mine happily worded, the Tribunal can consider the question of burden of proof regarding the points in dispute. The above question can thus be appropriately decided only by the Industrial Tribunal to which the reference is made.

9. The last question urged before us is that the workman of the Factory of the petitioner who were alleged to be the members of the respondent No. 2 Union were not present and were not thus parties to the resolution of the respondent No. 2 Union in which it was decided to raise the dispute relating to the workmen of the factory of the petitioner as per the charter of demands dated 30-10-1988 and therefore, the reference made at the instance of the respondent No. 2 Union is illegal and incompetent. The question whether the collective dispute raised by the general Union needs to be specifically supported by the workers of the particular establishment in regard to which the industrial dispute is sought to be raised and whether in fact, the workman of the factory of the petitioner have supported the sponsoring of the industrial dispute in the instant reference by the respondent No. 2 Union involve questions of fact and law which can appropriately be considered by the Industrial Tribunal.

10. It is, therefore clear that the instant writ petition filed under Article 226 of the Constitution to challenge the reference made by the State Government by its order dated 11-3-1991 is thus misconceived and the appropriate forum for the petitioner to do so is the Tribunal to which the reference is made. The challenge to the order of reference dated 11-3-1991 must fail and is rejected

11. We now turn to the challenge of the petitioner to the order made by the State Government on 28-3-1991 prohibiting the continuance of strike or lock-out in connection with the dispute which it has referred by its aforesaid order dated 11-3-1991. The submission on behalf of the petitioner is that no definite decision on the question whether there was any lock-out in existence in the factory of the

petitioner on the date of the reference .i.e. 11-3-1991, in connection with the dispute referred to the Tribunal under the order of reference dated 11-3-1991 is taken by the Government after giving a show-cause notice to petitioner and hearing it in that regard. It is urged on behalf of the petitioner that there was no lock out effected by the petitioner which was in existence on the date of the reference. The apprehension is that if in future the employer wants to have a lock out in the factory, the above order dated 28-3-1991 passed by the Government prohibiting the continuance of the lock-out in existence on the date of the reference would come in its way or at least complicate the said question.

12. It appears that no definite decision was taken by the Government much less by giving a show cause notice to the parties on the question as to whether there was in existence a strike or lock-out on the date of reference as is clear from the phraseology "which may be in existence on the date of reference" used in the order dated 28-3-1991 itself. The reasons regarding them are not far to seek if we examine the fact-situation about the same. After the conciliation proceedings resulted in failure when the petitioner informed the Conciliation Officer on 10-11-1990 that on 25-4-1990 it had entered into settlement with the Elar Fashions Employees" Union, it appears that the respondent No. 2 adopted an agitational approach and gave a strike call by its notice dated 21-1-1991 for settlement on its charter of demands dated 30-10-1988. According to the learned Counsel for the petitioner, since the striking employees posed danger to the property of the factory and the lives of the managerial staff, the petitioner obtained an ex parte temporary injunction against striking employees alleged to be the member of the respondent No. 2 Union restraining them inter alia from entering the factory.

13. Denying the above allegations about the threat to life and property made by the petitioner, it is submitted on behalf of the respondent No. 2 that the strike of employees in the factory of the petitioner was withdrawn after the reference regarding the charter of demands given by it was made by the State Government by its aforesaid order of reference dated 11-3- 1991. Accordingly it is his case that the Labour Commissioner and the Factory Manager on the petitioner were informed by the respondent No. 2 by its letter dated 4-4-1991 about the withdrawal of the strike and also about the resumption of duties by the striking employees w.e.f. 8-4-1991. However, according to the learned Counsel for the respondent No. 2, these striking workers were prevented from resuming their duties with the aid of the police in view of the ex-parte temporary injunction of the Civil Court. On the other hand, the learned Counsel for the petitioner has submitted that the strike was not withdrawn by these employees who were the member of the respondent No. 2 Union and the factory was working only partially.

14. It is in the background of these facts and circumstances that the State Government has issued the order dated 28-3-1991 prohibiting the continuance of the strike or the lock-out which may be in existence on the date of the reference because according to the petitioner the striking employees belonging to the

respondent No. 2 Union had continued their strike and had not withdrawn the same whereas according to the respondent No. 2, the striking workers had withdrawn the strike after the reference was made on 11-3-1991 and had as per its Notice dated 4-4-1991 gone to resume their work on 8-4-1991, but they were not allowed to resume their duties by the petitioner which action of the petitioner would amount to a "lock-out" within the definition of the said expression in section 2(i) of the Act. This view is reflected in the show-cause notice dated 12-4-1991 given by the Labour Commissioner to the petitioner for taking action against it for the breach of the impugned order dated 28-3-1991 by continuing the lock-out after the date of the reference by refusing to employ the striking employees who had withdrawn their strike and wanted to resume their duties.

15. In considering the question whether the order dated 28-3-1991 is illegal because no definite decision is taken by the Government on the question whether there was strike or lock-out in existence on the date of reference and also because on show-cause notice was given to the petitioner before issuing the said order dated 28-3-1991, it is necessary to emphasise that the object of section 10(3) of the Act is to prevent continuance of any strike or lock-out so as to promote investigation and settlement of the industrial dispute in an atmosphere of peace and harmony by the method of adjudication and not under pressure of either side exercised through the methods of direct action by resort to strike or lock-out. When therefore, the continuance of the strike or lock-out is prohibited u/s 10(3) of the Act from the date of reference, the State Government does not decide the legality or otherwise of the strike or lock-out in existence on the date of the reference. On the contrary, even if such a strike or a lock-out is lawful, it is sought to be prohibited from the date of the reference and therefore, it becomes illegal u/s 24(I)(ii) of the Act, if it is continued in contravention of the order passed u/s 10(3) of the Act. It is, therefore, clear that the concern of the State Government while considering the question of issuing an order u/s 10(3) of the Act is to see that there is no stoppage of work, that there is peace and harmony and that the production is maintained unhampered which is to the benefit of the community in general also and thus to serve the objects of the Act itself. From this point of view and since the legality of the strike or lock-out is not being decided u/s 10(3) of the Act, it is not necessary that the Government should decide definitely whether the stoppage of work is strike by employees or a lock-out by the employer because what is intended to be prohibited u/s 10(3) of the Act is the continuance of stoppage of work after the date of the reference.

16. As regards the question of giving a show cause notice before passing an order u/s 10(3) of the Act, it is already made clear that the legality of a strike or a lockout is not to be decided because even a lawful strike or a lock-out which may be in existence on the date of reference is intended to be prohibited by issuing an order u/s 10(3) of the Act. Secondly, if it is possible for the employer to declare a legal lock-out after the date of reference it may become necessary to ascertain whether there is in existence already a lock-out on the date of the reference because its continuance which is prohibited by an order u/s 10(3) of

the Act because illegal and in that case it is possible to confuse a legal lock-out declared after the date of reference as a lock-out which has already commenced prior to the date of reference and is continued thereafter although its continuance is prohibited by an order u/s 10(3) of the Act. However in view of the provisions of section 23 read with section 24 of the Act a strike or a lock-out cannot lawfully be declared during the pendency of the reference proceedings and thereafter during the period of operation of the award.

16A. In these circumstances and looking the object of the Act hereinbefore referred to, it is not necessary to give a show-cause notice before passing any order u/s 10(3) of the Act. The Andhra Pradesh High Court has in the case of Enadu Press Waters Union v. Government of A.P. (1979)1 L.L.J. 391, (See Paras 16 and 17 of the Judgment) also taken a similar view and has further held that an opportunity to show cause will defeat the very object with which section 10(3) was enacted.

17. The challenge to the order dated 28-3-1991 passed u/s 10(3) of the Act by the State must also therefore, fail and is rejected.

18. In the result, the instant petition fails and is dismissed.