
(1974) 01 CAL CK 0020
In the Calcutta High Court

Gouripore Co. Limited and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 10-01-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 12, 2

Citation : (1975) 1 LLJ 247

Hon'ble Judges : Amiya Kumar Mookerji, J

Bench : Single Bench

Judgement

Amiya Kumar Mookerji, J.—The petitioners are existing companies within the meaning of the Companies" Act having their factory at Garifa (Naihati), 24 Parganas. On August 2, 1972, the petitioner made an application under Article 226 of the Constitution to this Court challenging the validity of an order of reference dated July 7, 1972 made u/s 10 of the Industrial Disputes Act, 1947, by the respondent No. 1, State of West Bengal and a Rule was issued being C. R. No. 6667 (W) 72. An ad interim order staying further proceedings before the 8th Industrial Tribunal on the basis of the said impugned order of reference was also made in connection with the said Rule. The matter was heard for several days and it was adjourned to enable the petitioner to make an application for amendment of the original writ petition. Such application for amendment of the writ petition was made on June 25, 1973 and the matter came up for further hearing on August 1, 1973. The petitioner was granted leave to withdraw the writ petition with liberty to make a fresh application on the same cause of action and with further materials. Pursuant to such liberty as given by this Court the petitioner moved this Court again on August 7, 1973, and obtained the present rule.

2. The petitioners challenge the order of reference dated July 7, 1972, by which the grade and scale of pay of supervisory personnel was referred to by the State Government for adjudication before the 8th Industrial Tribunal. The said order of reference is Annexure " L" to the petition. It is alleged by the petitioners that no

member of the supervisory staff employed in the petitioners' jute factory is a "workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947, (herein, after referred to as the Act), as they are not only employed in supervisory capacity but are also employed to do "mainly" managerial or administrative duties on account of the nature of duties attached to their office and by reason of the powers vested in them. As many as 199 out of 224 members of such supervisory staff employed in the petitioners' factory draw wages exceeding Rs. 500 per month. The said supervisors do technical works, perform purely supervisory work or duties and discharge functions mainly of administrative or managerial nature and no member of the supervisory staff employed in the petitioners' mills can come within the meaning of "workman" as defined in Section 2(s) of the Act. By a letter dated March 30, 1971, addressed to the Supdt. Manager of the petitioners, the respondent No. 4, West Bengal Jute Mills Staff Association (hereinafter referred to as the union) placed certain demands for and on, behalf of its members, A copy of the said letter was also sent to the Labour Commissioner, West Bengal and thereupon the Deputy Labour Commissioner, West Bengal by a letter dated April 8, 1971, wanted the petitioners' views on the said demands. The petitioners were also informed by the said letter that a tripartite conference would be held on April 22, 1971. By a letter dated April 7, 1971, the Supt. Manager of the petitioners informed the Deputy Labour Commissioner that employees concerned were not at all "workmen" and the demand made by them could not constitute "industrial dispute". It was further pointed out that for the reasons stated in the said letter, it would not be possible for the petitioners to attend the proposed conference. By letter dated January 14, 1972 the petitioners were again requested by the Deputy Labour Commissioner to attend the conference on January 24, 1972, but the petitioners did not participate.

3. Dr. (Mrs.) P. Chakraborty, who was functioning as the Conciliation Officer submitted a report. A copy of the report was placed before me at the time of the hearing by Mr. Sen Gupta, the senior Government Advocate. It is stated in the said report that it would be desirable that wage structure of the jute workers would be determined shortly by the wage fixing machinery of the jute industry. In the absence of the opinion of the wage structure of the jute workers, it would be inopportune at that stage to take any further action on the dispute raised by the West Bengal Jute Mills Staff Association. Thereafter, it appears that there was another report of the Additional Labour Commissioner Mr. Quader Nowaz u/s 12(4) of the Act dated April 4, 1972, by which he recommended that the issue, namely, grades and scales of pay of supervisory personnel be referred to adjudication by a Tribunal. The said report was also placed before me by Mr. Sen Gupta. On the basis of that report, Government of West Bengal, by an order dated July 7, 1972 made an order of reference u/s 10 of the Act for adjudication of the said issue, viz., grades and scales of pay of supervisory personnel. The petitioners being aggrieved by the said order of reference came up to this Court.

4. Mr. Banerjee, appearing on behalf of the petitioner contended that the

Government of West Bengal deliberately failed and neglected to apply its mind to the most relevant factors that the members of the supervisory staff were not ""workmen" as defined in the Industrial Disputes Act. It is further contended that there had been no conciliation proceedings as envisaged in the Act and as there was no valid report u/s 12(4) of the Act, the condition precedent to the exercise of the powers u/s 10 of the Act are wholly non-existent and as such the said impugned order is mala fide, illegal and null and void.

5. Mr. Banerjee next contended that assuming, though not admitting that 25 members of the supervisory staff out of 224 are "workmen" within the meaning of Section 2(s) of the Act, these persons by reason of a comprehensive tripartite settlement dated May 7, 1972, arrived at and entered into by the Indian Jute Mills Association representing all "employees" on the one hand and 8 trade unions mentioned in paragraph 2 of the petition, were fully bound by the settlement and agreement and as such no dispute could at all be raised in law till the expiry of the period of the said agreement or settlement dated May 7, 1972 which would remain in force till December 31, 1974.

6. It is further contended by Mr. Banerjee that by a resolution dated August 25, 1960, the Government of India in the Ministry of Labour and Employment appointed a Central Wage Board for Jute Industry. The supervisory staff was not considered by the said Wage Board to be eligible to the benefits of the recommendations of the Wage Board, through, "workmen" as defined in Section 2(s) of the Act were to get such benefit. Therefore, it is abundantly clear in view of the said report of the Wage Board, that supervisory staff are not "workmen" within the meaning of the Act. According to Mr. Banerjee the order of reference is initiated by error of law apparent on the face of the record.

7. It is well settled since the decision of the Supreme Court as early as 1953 in the case of State of Madras v. C.P. Sarathy 1953-I L.L.J. 174, that, the order of making a reference u/s 10(1) of the Industrial Disputes Act is an administrative act and it is not a judicial or quasi-judicial act. The order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Article 226 of the Constitution, to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended.

8. Commenting on the observations in Sarathy's case that the function of the appropriate Government to make a reference u/s 10(1) is an administrative function, in a later decision, Rohtas Industries v. S.D. Agarwal AIR 1969 S.C. 705 the Supreme Court observed that said interpretation of Section 10(1) is based on the language of that provision as well as the purpose for which the power in question was given and the effect of a reference. That decision cannot be considered as an authority for the proposition that whenever a provision of law confers certain power on an authority on the basis of certain facts, the Court are precluded from examining whether the relevant facts on the basis of which the said opinion is said to have been formed were in fact existed. Therefore, in view of the above decision of the Supreme Court, the condition precedent to the

formation of such opinion is, that there is in existence an "industrial dispute". The recitals of the existence or apprehension of the industrial dispute in the order of reference cannot preclude judicial review from going beyond those recitals in determining whether in fact there was any material before the "appropriate Government", and, if there was, whether the Government applied its mind in coming to the conclusion that an industrial dispute was in existence or was apprehended.

9. Therefore, it is to be considered that under what circumstances an order of reference u/s 10(1) of the Act can be challenged in an application under Article 226 of the Constitution? In my view that can be challenged on the ground that the order is void *ad initio* or without jurisdiction, when the order of reference is made in bad faith or *mala fides* or the appropriate Government had no material before it or it did not apply its mind to a material fact or have taken into account some irrelevant or extraneous considerations or has not taken into consideration certain vital facts and materials which it ought to have taken into consideration. But if the order of reference is sought to be challenged on the ground that what was referred to was not an "industrial dispute" or the persons about whom reference was made were not "workmen" within the meaning of the Act, the decisions of those questions call for an examination of facts and the writ Court cannot go into that question. Whether supervisory personnel of the petitioner-company are ""workman" or not cannot be decided without proper materials and evidence as to the main functions of their work.

10. In *Burmashell Oil Storage and Distribution Co. of India Ltd. V. Burmashell Oli Storage Staff Association and Ors.* 1970- II L.L.J. 590, the Supreme Court held that the test for deciding whether a person is covered by the definition of the word "workman" is to see what is the main and substantial work which he is employed to do. If the supervisory work is incidental to the main and substantial work of any type, namely, clerical, manual and technical work, the employees could not be said to be employed in a supervisory capacity. Mr. Banerjee points out that from the letters of appointment and certain documents in the affidavit-in-reply he could satisfy the Court that supervisory staff discharges functions mainly of an administrative or managerial nature. Therefore, they come within the exception provided in Clause (iii) of Section 2(s) of the Act, and my attention is drawn to a form of letter of appointment which is Annexure "B" to the petition.

11. In paragraph 7 of the Affidavit-in-opposition it is stated that Annexure "B" to the said petition is not correct and true copy. The said letter was never supplied to the respondents at any point of time. A letter dated June 26, 1971, Annexure "F" to the Affidavit-in-opposition, lays down duties and responsibilities wherein it is stated "your duties, responsibilities, task and place of work may be varied by the management from time to time and you may be required to work in any shift during the day and night as directed by the management". Under these state of affairs, in my view, no reliance can be placed upon the wordings of the said letter of appointment wherein it is, only stated "as a member of the managerial

services of the company" and come to a decision that the supervisory personnel of the petitioners company discharge functions mainly of an administrative and managerial nature. Therefore, in my opinion upon these materials, the order of reference cannot be challenged on the ground that the supervisory personnel are not "workmen" within the meaning of Section 2(s) of the Act and as such the reference is illegal and without jurisdiction.

12. It appears that there was a report u/s 12(4) of the Act which was placed before me at the time of the hearing and on the basis of that report the appropriate Government made a reference u/s 10(1) of the Act, so it cannot be said that the Government did not apply its mind before making the reference.

13. In the affidavit-in-opposition it is stated that the supervisory personnel were excluded from the purview of the Wage Board Award, not because they are no workmen, but because of the fact that they are highly technical hands, indispensable to the management, and would not be easily replaced like that of ordinary workers, they normally never join in strike or agitation of other workers in support of their demands and have got better relation with the employers and by virtue of these, they are in a better position to bargain collectively, independently of the wage board.

14. It is also stated in affidavit-in-opposition that the 10 point charter of demand of the jute workers which resulted in 1972 settlement, did not include the scale of pay of the supervisory staff and inter alia members of the staff who ever raised any demand nor wanted to be covered by the terms of agreement.

15. So all the point's raised by Mr. Banerjee are disputed questions of facts and as such I cannot decide them.

16. In my view it is not proper for this Court to enter into an examination of facts which can lead to a correct answer to the question whether the supervisory personnel are workmen within the meaning of the Act and whether an industrial dispute exists within the meaning of Section 2(s). These matters can be decided by the Tribunal as preliminary issues on the basis of evidence to be laid before it. If the petitioner is aggrieved by the decision at that stage, it may move the writ Court for judicial review of the decision of the Tribunal on the preliminary issue. Therefore, in my opinion no writ of mandamus can be issued at this stage.

17. In the result all the points raised by Mr. Banerjee fail and the Rule is discharged. There will be no order for costs.

18. The copies of the two reports produced before me by Mr. Sen Gupta be placed on the record and marked as Ext. O.