

(2011) 07 AHC CK 0341

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49157 of 2000

Hindustan Aeronautics Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6(6)

Citation : (2011) 8 ADJ 102

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : S.D. Singh and Bharti Sapru, for the Appellant; Kripa Shankar Singh, S.N. Dueby and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Shishir Kumar, J.—Heard Sri S.D. Singh, learned counsel for the petitioner, Sri Kripa Shanker Singh, learned counsel for the respondents and learned Standing Counsel. This writ petition has been filed for quashing the award dated 16.3.2000 passed in Adjudication Case No. 53 of 1995 published on 18th August, 2000 (Annexure No. 1 to the writ petition) passed by the Presiding Officer Labour Court IV, Kanpur (respondent No. 2)

2. Sri S.D. Singh, learned counsel for the petitioner raised the pleading regarding maintainability of the reference u/s 4K of U.P. Industrial Dispute Act, 1947. It has been submitted that the Hindustan Aeronautics Ltd. is a Company, incorporated under the Indian Companies Act, 1956. It is totally owned and controlled by the Central Government. Therefore, no reference can be made under the Provisions of U.P. Industrial Dispute Act. It has been submitted that the reference by the Governor, State of U.P. was made u/s 4K of the Industrial Dispute Act. On 23.12.1992, by referring dispute as:

3. An objection was taken on behalf of the petitioner before the labour Court that Provisions of U.P. Industrial Dispute Act is not applicable, as it is totally controlled

Central Government Organization. The judgment in writ petition No. 13936 of 1995 is decided on 29.9.1997, was filed and that was considered by the Court and award was given, on that basis by the order dated 30th April, 1998, holding therein that in view of the judgment in writ petition, the reference made by the Governor of U.P. u/s 4K of the Industrial Dispute Act was not maintainable and award was given to that effect, according to the petitioner, this award has become final and nobody has challenged the such award given by the labour Court. It appears that an application u/s 6(6) of the U.P. Industrial Dispute Act was filed, which is to correct any clerical or arithmetical mistake. Section 6(6) of the U.P. Industrial Dispute Act 1947 is quoted below:

(6) A Labour Court, Tribunal or Arbitrator may either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistakes in the award, or errors arising therein from any accidental slip or omission; whenever any correction is made as aforesaid, a copy of the order shall be sent to the State Government and the provision of this Act, relating to the publication of an award mutatis mutandis apply thereto.

4. On the basis of such application, an objection was taken by the petitioner that was rejected and now award which is impugned in the present writ petition has been given.

5. Sri S.D. Singh has placed reliance upon the various judgment of this Court as well as Apex Court in Hindustan Aeronautics Ltd. and Another Vs. Hindustan Aero Canteen K. Sangh and Others, . It was the case of the petitioner itself. The Apex Court has held in para No. 2 that in view of the Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , the Apex Court has taken a view that the "Appropriate Government" will be the Government which exercise control and authority over the concerned organization. It has further held that it is undisputed that the Hindustan Aeronautics Ltd. is an Undertaking of the Central Government and it is the Central Government which exercises full control over the same and Sri S.D. Singh has further placed reliance upon the a judgment of this Court in M/s. Hindustan Aeronautics Ltd. v. State of U.P. and others, 2008 (117) FLR 19 a single Judge of this Court has also held in para 9 that the reference made u/s 4K will not be maintainable, if the organization is controlled by the Central Government Another judgment, which was relied upon by the Labour Court by which the first award was given in writ petition No. 13936 of 1995 decided on 29.9.1997, the Single Judge of this Court has also allowed writ petition holding therein that appropriate Government will be central Government reference u/s 4K will not be maintainable.

6. Sri. S.D. Singh, learned counsel for the petitioner has also placed reliance upon an order of the Apex Court in the case of petitioner itself. The Civil Appeal No. 5655 of 2006, which has been decided on 4th December, 2006. In this appeal also question was raised regarding maintainability of reference. The Apex Court held that question is no longer res-integra in view of the Constitution

Bench decision of this Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

7. In such circumstances, the learned counsel for the petitioner states that once the award has been given holding therein that reference u/s 4k of the U.P. Industrial Dispute Act is not maintainable, the application u/s 6(6) of the U.P. Industrial Dispute Act cannot be held to be maintainable. Because there was no clerical and arithmetical error in the earlier award given by the labour Court. Admittedly, the earlier award dated 30th April, 1998 has become final.

8. Sri Kripa Shanker Singh, learned counsel for the respondent has submitted that each and every aspect of matter has been considered by the Court, therefore, it cannot be said that the award of the labour Court impugned in the writ petition is any way without jurisdiction. Subsequently, amendment has come, therefore, now the State Government has jurisdiction to make a reference and the dispute can be adjudicated.

9. I have considered the submission of the parties and perused the record. It is clear from the record that on an application made by the respondent, the Governor state of U.P. has made a reference u/s 4K of the U.P. Industrial Dispute Act by order dated 23rd December, 1992. On an objection made by the petitioner by order dated 30th April, 1998 an award was given holding therein that in view of the judgement in writ petition No. 13936 of 1995 Hindustan Aeronautics Ltd. (Petitioner) is totally owned and controlled by the Central Government, therefore, the reference under the Provisions of U.P. Act cannot be held to be maintainable. This award has been become final and nobody has challenged the validity of this award regarding validity of reference. From the perusal of Section 6(6) of the U.P. Industrial Dispute Act, it is clear that in case, there is any clerical mistake or error in the award then in such case, if any application is made, the same can be done accordingly.

10. In my opinion, there was no clerical or arithmetical error in the award. The award was given on the basis that the reference itself was bad in law, as the State Government was having no jurisdiction. Admittedly, the amendment has come by notification dated 31.7.1998 and award was given on 23.12.1992.

11. I have considered the judgements and submission of the learned counsel for the parties. From perusal of the record, it is clear that this Court as well as Apex Court has held that reference will not be maintainable in view of the fact that Appropriate Government will the Government which exercises control and authority over the concerned organization. Admittedly, Hindustan Aeronautics Ltd. is an Undertaking of the Central Government and it is the Central Government which exercises full control over the same. Therefore, reference u/s 4K itself was not maintainable as held in the earlier award, therefore, subsequent award on the basis of same reference and evidence on an application made by the respondent u/s 6 (6) the U.P. Industrial Dispute Act itself was not maintainable. In view of the aforesaid fact, this writ petition is allowed and order

dated 16.3.2000 is hereby quashed.

No order as to costs.