
(2019) 01 CAL CK 0144

In the Calcutta High Court

Case No : Writ Petitions (Wp) No. 6646 (W) Of 2015

Hindustan Engineering & Industries Ltd. & Anr.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 CAL CK 0144

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Pradip Ghosh, Arunava Ghosh, P.B. Chowdhury, A.K. Shaw, R.K. Dubey, Probal Kumar Mukherjee, Sukanta Chakraborty, Anindya Halder

Final Decision : Dismissed

Judgement

Debangsu Basak, J

The petitioners have assailed an order of reference made by the authority and the award dated July 28, 2014 passed thereon under the provisions of the Industrial Disputes Act, 1947 in the present writ petition.

Learned Senior Advocate appearing for the petitioners has submitted that, the order of reference suffers from non application of mind. According to him, the reference is bad. Referring to the order of reference dated March 27, 2008, learned Senior Advocate appearing for the petitioners has submitted that, the order of reference discloses that, the appropriate Government did not form the opinion correctly. The issues framed in the order of reference do not take into consideration the factual situation obtaining for the so called disputes. The issues as framed, evidences non application of mind. Persons who were allegedly locked out, have been said to be terminated from service, in the issues as framed by the order of reference. The order of reference suffers from the vice of non application of mind. The assumption of jurisdiction by the appropriate Government under the provisions of the Industrial Disputes Act, 1947 is

incorrect. He has submitted that, same persons have been named in Annexure - C to the order of reference which deals with persons who have been allegedly locked out as also Annexure - D thereto. Annexure - D of the order of reference deals with persons who have been allegedly terminated from services. Same persons cannot suffer both the order of lock out as well as the order of termination at the same time. This fact shows that the appropriate Government purporting to exercise powers under Section of the Act of 1947 is guilty of non application of mind. In support of such contentions, he has relied upon 2015 Volume 15 Supreme Court Cases page 1 (Prabhakar v. Joint Director, Sericulture Department & Anr.), 2005 Volume 12 Supreme Court Cases page 738 (ANZ Grindlays Bank Ltd. (Now know as Standard Chartered Grindlays Bank Ltd.) v. Union of India & Ors.), 1992 Volume 1 Calcutta Law Times page 446 HC (Aaj Kaal Publishers Pvt. Ltd. v. State of West Bengal & Ors.).

Referring to the impugned award dated July 28, 2014, learned Senior Advocate for the petitioners has submitted that, the award is perverse. It is without jurisdiction. The order of reference being bad, the Industrial Tribunal had no jurisdiction over the subject matter. The impugned award deals with matters which were not referred. The impugned award travels beyond the order of reference assuming that, the order of reference is good in law. Moreover, the impugned award purports to award reliefs which cannot be worked out. The impugned award proceeds to grant relief to the self-same set of persons who have been granted relief for a lock out as well as a termination. He has referred to the detailed reply that the petitioners had submitted before the Industrial Tribunal. He has submitted that, such reply has not been considered and understood in the correct perspective by the Industrial Tribunal. In support of his contentions, he has relied upon All India Report 1967 Supreme Court page 469 (Delhi Cloth & General Mills Co. Ltd. v. Workmen & Ors.).

Learned Senior Advocate appearing for the private respondents has submitted that, there is no infirmity in either the order of reference or the impugned award warranting an interference by the Writ Court. He has submitted that, if any irregularity appears from the order of reference, the same is due to the reason that, there were incorrectness in the lock out notice and the order of termination. The reference was made on the basis of the lock out notice and the order of termination. Moreover, the Industrial Tribunal considered the pleadings of the parties, the evidence led by the parties and came to the finding which is supported by adequate reasons. Therefore the Court should not interfere.

The Management of the first petitioner and its workmen were embroiled in industrial disputes in the year 2004 and 2005. The respondent no. 3 is the union of the workmen of the first petitioner. It was championing the cause of the workmen of the first petitioner. By a writing dated February 12, 2005, the first petitioner announced lockout in respect of 6 workmen with effect from February 13, 2005. By a writing dated February 14 2005, the first petitioner announced lockout in respect of 10 workmen with effect from February 15, 2005. By a

writing dated February 16, 2005, the first petitioner announced lockout in respect of 15 workmen with effect from February 17, 2005. By a writing dated February 21, 2005, the first petitioner announced lockout in respect of 7 workmen with effect from February 22, 2005. By a writing dated February 24, 2005, the first petitioner announced lockout in respect of 18 workmen with effect from February 25, 2005. By a writing dated March 1, 2005, the first petitioner announced lockout in respect of 220 workmen with effect from March 2, 2005. According to the respondent no. 3, the first petitioner refused employment to 22 other workmen without any notice on March 1, 2005, that is, the date on which 220 workmen were locked out, illegally. By a letter dated February 16, 2005, the respondent no. 3 sought intervention of the Principal Secretary, Labour Department and Labour Commissioner, in respect of the unfair labour practice of the first petitioner by issuing illegal lockout notices. The complaint was repeated on February 28, 2005. By a letter dated February 21, 2005, the respondent no. 3 raised industrial disputes and sought intervention of the Conciliation Officer on the illegal lockout notices. By a writing dated July 13, 2006, the respondent no. 3 sent the list of 22 workmen who were refused employment to the authorities. Conciliation proceedings were initiated. The conciliation proceedings not being disposed of expeditiously, a writ petition was filed before the Hon'ble High Court for early disposal of the conciliation proceedings. The conciliation proceedings failed. The conciliation officer sent his failure report under Section 12 of the Act of 1947. By letters dated October 4, 2007 and December 4, 2007, the respondent no. 3 sought the intervention of the appropriate Government so that there a reference can be made to the appropriate forum. By the writing dated March 27, 2008, Assistant Secretary to the Government of West Bengal issued the order of reference on 6 issues tabulated in such writing. The issues referred to the Industrial Tribunal are as follows: -

"1) Whether the management's action of putting the workmen whose names are shown in Annexure 'A' with effect from February 12 - February 16, 2005 under lock-out is justified?

2) Whether the management's action of putting the workmen whose names are shown in Annexure 'B' with effect from February 21-24, 2005, under lock-out is justified?

3) Whether the management's action of putting the workmen whose names are shown in Annexure 'C' with effect from March 1, 2005 under lock-out is justified?

4) What relief, if any, are the workmen entitled to?

5) Whether the management's action of terminating workmen whose names are shown in Annexure 'D' by way of refusal of employment is justified?

6) To what relief, if any, are they entitled?"

Prabhakar (supra) has considered a reference of a belated industrial dispute by the appropriate Government. In the facts of that case, the Supreme Court found

that, there was unexplained delay in making the reference by the appropriate Government under Section 10 of the Industrial Disputes Act, 1947. In such context, it has held as follows: -

"14. When the "appropriate Government" makes a reference of an industrial dispute for adjudication, it does not decide any question of fact or law. The only condition, which the exercise of that power should satisfy, is that there should be the existence or apprehension of an industrial dispute. When once the Government is satisfied about this question, it acquires jurisdiction to refer the dispute for adjudication. However, the condition precedent to the formation of such opinion, that there should be an existing or apprehended "industrial dispute", is imperative and the recitals of the existence or apprehension of the industrial dispute cannot preclude the Court to exercise its power of judicial review and to determine 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 and it was expedient to make the reference. Therefore, an order of reference is open to judicial review if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration.

17. From the aforesaid discussion, it clearly follows that even when making a reference by the appropriate Government is an administrative act, before making such a reference it has to form an opinion as to whether any industrial dispute exists or is apprehended. While forming this opinion, the appropriate Government is supposed to take all relevant facts into consideration touching upon this aspect. If the power is not exercised properly, it is amenable to judicial review. Thus, where an industrial dispute exists or is apprehended, but the appropriate Government refuses to make reference, such a refusal can be challenged in the court of law. Conversely, which is equally true, if the reference is made even when no dispute exists or is apprehended, such a reference will also be subject to judicial review."

ANZ Grindlays Bank Ltd (supra) has held that, although ordinarily, an interference by the High Court under Article 226 of the Constitution is not called for in respect of an order making a reference under Section 10 of the Industrial Disputes Act, 1947, however, in case of infirmity in/and where futility of the reference can be demonstrated from a reading of its terms and admitted facts, validity of the reference can be examined under Article 226 of the Constitution, as no evidence is required to be considered for examining such issue raised. In the facts of the present case, it cannot be said, by reading the order of reference by itself, in the factual matrix obtaining leading upto the order of reference, that, there is any infirmity therein vitiating the reference or that it is futile to continue with the reference.

Aaj Kaal Publishers Private Ltd. (supra) has held that, the order of reference in

that case was bad, as there was no industrial dispute to be referred. In the facts of that case, the services of the employee was not terminated. At best, it was a demotion. The facts situation obtaining in the present case are different to those obtaining in Prabhakar (supra), ANZ Grindlays Bank Ltd. (supra) and Aaj Kaal Publishers Private Ltd. (supra).

Delhi Cloth & General Mills Co. Ltd. (supra) had a reference made to the Industrial Tribunal on four issues. The four issues referred to in Delhi Cloth & General Mills Co. Ltd. (supra) are as follows:-

"1. Whether in calculating the bonus table for the accounting year ending 30-6-1965 the allocations separately made by the Delhi Cloth & General Mills Co., Ltd. towards the Capital and Reserves of the Delhi Cloth Mills and Swatantra Bharat Mills, the two units of the Company is fair and reasonable? If not, what directions are necessary in this regard ?

2. Whether the workmen of these Mills are entitled to bonus at a rate higher than 6 per cent of the wages for the accounting year ending 30-6-1965? If so, what directions are necessary in this regard?

3. Whether the strike at the Delhi Cloth Mills and the lock-out declared by the management on the 24-2-1966 are justified and legal and whether the workmen are entitled to wages for the period of the lock-out?

4. Whether the 'sit-down' strike at the Swatantra Bharat Mills from 23-2-1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike?"

The Union and the Management before the Industrial Tribunal raised various contentions. The Industrial Tribunal considered such contentions. It had arrived at the view that, since the strike covered by the third issue and the sit down strike covered by the fourth issue, were disputed by the unions or at any rate not admitted by them "it would be duty of the Tribunal to decide whether there was a strike at D.C.M. as covered by issue no. 3 and whether there was a strike as covered by issue no. 4". The Tribunal had held that, it would not exceeds its jurisdiction and would not be going beyond the scope and ambit of the reference to examine the third and the fourth issues in such light. In such context, the Supreme Court has held as follows:-

"20. Proceeding in the order in which the arguments were addressed, we propose to deal with issues 3 and 4 first. Under s. 10(1) (d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring "the dispute or any matter appearing to be connected with, or relevant to, the dispute,..... to a Tribunal for adjudication." Under s. 10(4)"where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be,

shall confine its adjudication to those points and matters incidental thereto."

21. From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word 'incidental' means according to Webster's New World Dictionary:

"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:"

"Something incidental to a dispute" must therefore mean something happening as a result of or; in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lock-out 'and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a lock-out. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lock-out was improper. The third issue has also a sub-issue, namely, if the lock-out was not legal, whether the workmen were entitled to wages for the period of the lock-out. Similarly, the fourth issue proceeds on the basis that there was a sit-down- strike in the Swatantra Bharat Mills on 23-2-1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit- down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike."

In the facts of the present case, the Industrial Tribunal did not question any of the issues framed in the order of reference. It did not question the existence of the lockout. It had resolved the discrepancy in the dates of the lockout in respect of individual employees without questioning the main issue as to whether or not, there was a lockout during the relevant period. An industrial Tribunal is obliged to arrive at a decision on the issues referred to it. In arriving at a decision on an issue referred to it for decision, the Industrial Tribunal is obliged to consider the evidence on the issue and arrive at a finding on the issue. When the Industrial Tribunal arrives at a finding on an issue referred to it, such a finding cannot be said to be beyond the reference. An Industrial Tribunal will not be acting beyond its jurisdiction, when it reconciles a date which forms part of the dispute with the

entitlement of an individual employee governed by the reference referred to it.

Section 10 of the Act of 1947 allows the appropriate Government to make a reference of the Industrial Disputes. The reference of an Industrial Dispute to the Tribunal has two parts. On one part, it will contain the nature of the dispute. The nature of the dispute can also be said to be the quality of the dispute. By nature or quality of the dispute, one would understand as to what the dispute is, such as, whether it is dispute as to lock out or strike or any other industrial dispute. The other part of the reference would be the quantity of the dispute, that is to say that, the time period during which, the nature of the dispute referred to in the reference, existed and the number of persons entitled to relief with regard thereto. The quality of the dispute cannot be reframed by the Tribunal. It is however open to the Tribunal to arrive at the finding with regard to the quantity of the dispute that is to say that, which person will receive what, if at all any compensation given the nature of the dispute. In the facts of the present case, the Tribunal has exercised jurisdiction in deciding upon the quantity of the dispute that is to say, it had decided on the persons who are entitled to receive compensation for the duration of the dispute. In my view, the Tribunal did not exceed its jurisdiction in doing so. Decision on the quantity of the dispute is a decision which if made within the quality of the reference, would be and must be construed to be a matter incidental to the reference, within the meaning of Section 10 of the Act of 1947.

The impugned award of the Tribunal takes into account the number of personnel affected by the lock out. There are workers, who had retired during the pendency of the reference. The award therefore directs the employer to reinstate those workmen who have not retired from the service actually, without payment of any back wages to them. There is no infirmity in the impugned award, requiring an interference.

In such circumstances, W.P. No. 6646 of 2015 is dismissed.

No order as to costs.

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