
(1964) 03 PAT CK 0009

In the Patna High Court

Case No : Misc. Judl. Case No. 403 of 1962 & Misc. Judl. Case No. 949 of 1962

Hindustan General Electrical Corporation Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 33(2)

Citation : AIR 1964 Patna 379 : (1965) 2 LLJ 97

Hon'ble Judges : Ramaswami, C.J.; Choudhary, J

Bench : Division Bench

Advocate : Balbhadra Prasad singhand Bindabashini Prasad Sinha, for the Appellant; B.C. Ghose, Radha Raman and Dinendra Nath, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the petitioner has applied to the High Court for calling upon the respondents to show cause why the notification of the Government of Bihar dated the 27th October, 1961 referring the industrial dispute u/s 10(1)(c) of the Industrial Disputes Act to the Labour Court, Ranchi, should not be quashed by the High Court by grant of a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown on behalf of the respondents to whom notice of the rule was ordered to be given.

2. The notification of the State Government dated the 27th October, 1961, which is annexure A to the writ application, reads as follows:

"No. III/D1-6045/611E-8084 whereas the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of Hindustan General Electrical Corporation Ltd., P.O. Karampura, Dhanbad and their workmen represented by Karampura Workers Union, P.O. Karampura, Dhanbad, regarding the matters specified in Annexure "A" annexed hereto:

Now therefore, in exercise of the powers conferred by Sub-section (1) of Section

10 of the Industrial Disputes Act, 1947 (XIV of 1947) the Governor of Bihar is pleased to refer the said dispute to the Labour Court, Ranchi constituted in the State Government Notification No. III/D1-12047/571-13149 dated 26th July.

Annexure-A

Whether the dismissal/discharge of the workmen mentioned below is justified? If not, whether these workmen should be reinstated and/or compensated ?

List of dismissed workmen H. G. E. C., Karampura, Dhanbad. As given by the Karampura workers Union.

493 workers.

Note: Is ke atirikt 10 ya 15 members or bhi bhar Sakte hain.

By order of the Governor of Bihar, Sd/- G. S. Grewal, Under Secretary to Government.

Memo No. III/D1-6045/611E-8084, Patna, the 27th October, 1961.

Copy forwarded to the Presiding Officer, Industrial Tribunal, Bihar, Patna/ Presiding Officer, Labour Court, Patna / Ranchi / Musaffarpur / Manager, Hindustan General Electrical Corpn. Ltd., P. O. Karampura, Dhanbad / Political Department (Special Section) Industries Department/Commissioner, Chotanagpur Division/District Officer, Dhanbad / Sub Divisional Officer, Dhanbad / Assistant Commissioner of Labour, Jamshedpur/Labour Officer, Dhanbad/Chief Inspector of Factories, Bihar, Hinoo, Ranchi / Editor, Shramik / Statistical Authority, Bihar, Patna/Report and Returns Branch/Assistant Commissioner of Labour (Research) / Director of Public Relations, Bihar (3 copies for information and giving publicity) To D. P. R. only.

2. The Presiding Officer is requested to send to the Government of Bihar in the Labour Department 3 signed copies of his award as soon as possible and simultaneously send a copy of it to the Asstt. Commissioner of Labour, Jamshedpur.

Sd/- G.S. Grewal, Deputy Secretary to Govt. 27-10-61"

3. The case of the petitioner is that they were compelled to dismiss on the 28th January, 1961, eleven workmen for various acts of proved misconduct. There was a subsequent strike resorted to by the workmen of the company on the 30th of January, 1961. In spite of the persuasion of the petitioner, the workmen did not resume their work and ultimately charge-sheet was issued against the workers for taking part in an illegal strike. As a result of departmental enquiry the petitioner found the workers guilty of various-acts of misconduct and accordingly on different dates between 6th and 9th September, 1961 orders of dismissal were passed with regard to 404 workmen. As a reference under the Industrial Disputes Act was pendings at that time, namely Reference Nos. 2 and 3 of 1961, the petitioner made separate applications to the Labour Court, Ranchi,

for approval of the action taken against the workmen in accordance with the proviso to Section 33(2)(b) of the Industrial Disputes Act. The petitioner also tendered one month's wages to each of the workmen in accordance with the same proviso to Section 33(2)(b) of the Act. While these applications u/s 33(2)(b) of the Industrial Disputes Act were pending before the Labour Court, Ranchi, there was a notification made by the State Government on the 27th October, 1961, referring the industrial dispute for adjudication u/s 10(1)(c) of the Industrial Disputes Act.

4. On behalf of the petitioner the argument put forward by learned Counsel is that the order of reference made by the State Government is illegal and ultra vires since the proceeding for approval u/s 33(2)(b) of the Industrial Disputes Act was pending before the Labour Court, Ranchi, with regard to the dismissal of the workmen concerned. In our opinion, there is no substance in this argument. The question presented for determination in this case is whether on the date of the reference, namely, on the 27th October, 1961, there was material before the State Government upon which it could form an opinion that an industrial dispute existed or was apprehended. It was not disputed by learned Counsel for the petitioner that on the 27th October, 1961 the petitioner had in fact dismissed 493 workmen which was the subject matter of the reference made by the State Government u/s TO (1) (c) of the Act. But the argument put forward on behalf of the petitioner was that until and unless the labour Court had disposed of the applications made by the petitioner for approval of the action taken u/s 33(2)(b) of the Act, there was no final order of dismissal of the workmen and the State Government, therefore, was not competent to make a reference of the industrial dispute for adjudication under section. 10(1)(c) of the Act. We do not think there is tiny substance in this argument. The competency of the State Government to make the order of reference on the 27th October, 1961 cannot be tested by reference to subsequent possibilities. Even if the Labour Court were ultimately to hold that no approval should be given u/s 33(2)(b) of the Act, the competency of the State Government to make a reference u/s 10(1)(c) of the Act on the 27th October, 1961 cannot be challenged.

5. For these reasons, we hold that there is no ground made out on behalf of the petitioner for grant of a writ under Article 226 of the Constitution in this case. We are of opinion that the Labour Court, Ranchi, rightly overruled the preliminary objection raised by the petitioner by its order dated the nth August, 1962. We accordingly dismiss this application, but there will be no order as to costs.