
(2012) 09 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 3058 of 2012

Hindustan Unilever Limited and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)(c), 12(4), 2(k), 7, 7A
Industrial Employment (Standing Orders) Act, 1946 — Section 3
Trade Unions Act, 1926 — Section 2(h), 28, 6

Citation : (2013) 1 GLD 436 : (2013) 2 GLT 604

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P.K. Goswami, Mr. S. Sarma, Mr. T.K. Bhuyan and Mr. K.R. Baruah, for the Appellant; S. Sarma, S. Chakaborty and Mr. A. Dasgupta, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—By way of this petition under article 226 of the Constitution of India, petitioners seek quashing of Notification No. GLR. 274/2006/70 dtd. 02-06-2012 issued by the second respondent as well as order dated 18-06-2012 passed by the Presiding Officer, Industrial Tribunal, Dibrugarh in Reference Case No. 1/2012. Further prayer made is for a direction to the State to provide necessary assistance to the petitioners in the task of membership verification of the workers working in their factory at Doomdooa, district-Tinsukia, Assam. Case of the petitioners is that petitioner No. 1 is a company incorporated under the Companies Act, 1956, having one of its personal product factory at Doomdooa Industrial Estate in the district of Tinsukia, Assam. Petitioner No. 2 is the authorised representative of petitioner No. 1 (petitioners referred to as "management" hereafter).

2. Management entered into a settlement on 23-04-2004 with the Hindustan Lever (PPF) Workers Union (respondent No. 7), affiliated to Center of Indian

Trade Unions (CITU). However, inspite of such settlement, the factory faced number of strikes and work stoppages upto July, 2007. The situation reached a flash point in July, 2007, which led to declaration of lock out on 15-07-2007.

3. Following such unpleasant development, a new union called Hindustan Unilever Limited (PPF) Shramik Sangha (respondent No. 6) was formed. Respondent No. 6 is affiliated to the Indian National Trade Union Congress (INTUC).

4. Following discussion between the management respondent No. 6 and representatives of the Labour Department, Government of Assam, lock out was lifted from 03-09-2007. Settlement was arrived at between the parties and it was found that 629 employees out of 704 were members of respondent No. 6, who requested the management vide letter dated 01-12-2007 to deduct their individual membership subscription of respondent No. 6 from their wages.

5. Subsequently, management and respondent No. 6 signed a Long Term Settlement (LIS) on 12-04-2008 in the presence of the Assistant Labour Commissioner, Tinsukia following constructive negotiations. The LIS was made applicable to the employees in accordance with law, which resulted in restoration of industrial peace.

6. Respondent No. 7 filed W.P. (C) Nos. 5086/2007 and 1069/2008 before this Court challenging the legality of the lock out and seeking direction for ascertainment of majority to facilitate amicable settlement. However, for the reasons given in the judgment dated 11-02-2010, this Court declined to interfere and dismissed the writ petitions.

7. In the meanwhile, management received number of petitions from the workmen requesting that the membership fee deduction from their wages should be stopped. Accordingly, such deduction was stopped w.e.f. July, 2010. Though respondent No. 6 had filed a civil suit alongwith an injunction petition against the above, the learned Civil Court dismissed the injunction petition. Thereafter, the suit was also dismissed for default.

8. An industrial dispute was raised by the respondent No. 6 on the issue relating to stoppage of membership fee deduction from the wages of the workmen. As conciliation failed, the State Government made a reference to the Industrial Tribunal following which Reference Case No. 7/2010 was registered, which is now pending.

9. As both respondent Nos. 6 and 7 claimed to represent majority of the workmen, management requested the State to facilitate an election based membership verification process. Thereafter, Labour Commissioner, Assam (Respondent No. 3) directed the Assistant Labour Commissioner, Tinsukia to conduct membership verification through secret ballot. However, respondent No. 6 objected to the membership verification process as according to it, the said issue is connected with the subject matter of the pending reference. As such, the

verification process could not be completed.

10. In view of such a situation, management decided to conduct verification by interview method under the supervision of a retired Supreme Court Judge. But it was objected to by respondent No. 6. In view of lack of consensus between the two unions, the State Government decided to disassociate itself from the verification process. In the meanwhile, on the request of respondent No. 6, conciliation proceeding was initiated by the Assistant Labour Commissioner by issuing notice of conciliation dated 30-01-2012. Management was asked to maintain status-quo on the subject matter during the pendency of conciliation proceeding. As conciliation failed, report u/s 12(4) of the Industrial Disputes Act, 1947 (Act) was submitted to the State Government.

11. In the meanwhile, the LTS signed in the year 2008 expired on 31-03-2012 and a new LTS was required to be signed. While invoking conciliation proceeding, respondent No. 6 also submitted a charter of demand dated 21-03-2012 before the management.

12. In view of urgency of the situation as signing of new LTS is directly related to maintenance of industrial peace, management wanted to conduct membership verification of the workmen under the supervision of a retired Supreme Court Judge to find out the majority union. 18-06-2012 was the date fixed for conducting such verification but respondent No. 6 did not allow such verification to take place.

13. Management received a notice dated 19-06-2012 from the Industrial Tribunal, Dibrugarh stating that the Government has referred the dispute mentioned in the schedule therein to the Tribunal vide Notification No. GLR. 274/2006/70 dated 02-06-2012 u/s 10(1)(C) of the Act and that by order dated 18-06-2012, the learned Tribunal while directing the parties to file written statement, further directed the management to keep the membership verification process in abeyance.

14. The relevant portion of the Government Notification dated 02-06-2012 is as under:--

1. Whether the Management of Hindustan Unilever Personal Product Factory, Doomdooma are justified in proposing for conducting membership verification of Unions by interview method which will be conducted by a Retired Judge appointed by the management?

2. If not, whether the management should treat the Hindustan Unilever (P.P. Factory) Shramik Sangha, Doomdooma as only representing majority Union in the Factory?

15. The following is the relevant portion of the order of the learned Tribunal:--

Seen the petition filed by the workmen who have appeared to-day itself. In the petition filed by the workmen it has been stated that the management has been

making preparation for conducting membership verification of the Union by interview method, to be conducted by a retired Judge. The management has already appointed a retired Judge for verification the membership by interview method. It has been contended by learned counsel for the workmen, that if the management continues with their exercise of verification of membership by a retired Judge during the pendency of this reference case before this Tribunal, the entire matter would be infructuous. It is pertinent to mention that a reference has already been received by this Tribunal from the Government for adjudication and a reference case has already been registered. The terms of Reference are as under....

.....

The terms of reference made by the Government to be adjudicated by this Tribunal, shows that, the Tribunal is to ascertain whether the management are justified in proposing for conducting membership verification of the Union by interview method to be conducted by a retired Judge appointed by the management. If the management, submitted by the learned counsel for the workmen, continues with verification of membership through retired Judge pending the reference on the same question, it would rendered the entire exercise by this Tribunal infructuous.

In the above view of the matter the contention of the workmen seems to have merit. Since the notice of this reference is yet to be served on the management, it may not be proper to pass any order at this moment without hearing the management.

Let a notice of the petition filed by the workmen be served on the management fixing 25-06-2012 for hearing on the petition. In the meantime the management is directed, in the interest of justice, to keep their process for conducting membership verification in abeyance, till hearing and disposal of this petition on 25-06-2012. The workmen to take steps for serving notice on the management alongwith a copy of this Order as well as the petition.

16. Aggrieved, the management has filed the present writ petition with the prayer as indicated above. The basic ground of challenge is that ascertainment of membership strength of a union cannot be a subject matter of industrial dispute and, therefore, the reference is not maintainable as there is no existence or apprehension of any industrial dispute. The jurisdiction of the Industrial Tribunal to entertain the reference is also questioned on the ground of lack of territorial jurisdiction inasmuch as the High Court at the relevant time had notified that the concerned District and Sessions Courts will function as the Labour Courts and Industrial Tribunals. Since the factory is situated at Doomdooa which falls within the judicial district of Tinsukia, the District Court at Dibrugarh acting as the Industrial Tribunal did not have the jurisdiction to entertain the reference. Order of the Industrial Tribunal is also challenged on the ground that such an order of injunction could not have been legally passed.

17. This Court by order dated 22-06-2012 had stayed the order of the learned Industrial Tribunal dated 18-06-2012.

18. The Assistant Labour Commissioner, Tinsukia (respondent No. 5) has filed his affidavit contending that the subject matter of the reference, which has been registered as Reference Case No. 1/2012, comes within the ambit of industrial dispute as defined u/s 2(k) of the Act.

19. Respondent No. 6 in its affidavit has stated that the issue in Reference Case No. 7/2010 is as follows:--

1. Whether the Management of Hindustan Unilever Ltd. (PPF) Personal Product Factory, Doomdooma are justified in deciding to stop the so far continued system of deduction of Sangha's contribution @ Rs. 15/- per month per worker.

2. If not, whether the Management are bound to continue the deduction through their wage register.

According to respondent No. 6, the above issue also covers the issue raised in Reference Case No. 1/2012. Respondent No. 6 has contended that it is the majority union and there is no impediment for the management to enter into LTS with it as was done on the earlier occasion. It is further stated that the High Court has issued subsequent notification restoring the earlier jurisdiction of the Labour Courts and Industrial Tribunals and consequently, Reference Case No. 1/2012 has been transferred to the Industrial Tribunal, Dibrugarh, which has the jurisdiction to adjudicate the reference.

20. Respondent No. 7 in its affidavit has stated that respondent No. 6 does not command the support of the majority of workers for which it is avoiding the democratic process to disclose its strength. It is further contended that it is the respondent No. 7 which has the support of majority of the workmen. Respondent No. 7 supports membership verification through secret ballot. Finally, respondent No. 7 also contends that the subject matter of Reference Case No. 1/2012 is not an industrial dispute as defined u/s 2(k) of the Act and, therefore, the reference is not maintainable. In this respect, it supports the case of the management.

21. Heard Mr. P.K. Goswami, learned Senior Counsel assisted by Mr. S. Sarma, learned Counsel for the petitioners. Also heard Mr. S. Sarma, learned Counsel appearing for the State. Mr. S. Chakraborty and Mr. A. Dasgupta, learned Counsels have appeared for respondents 6 and 7 respectively and they have been heard.

22. Though a number of grounds were taken in the writ petition, the hearing has been confined to the issue as to whether membership verification of respondent Nos. 6 and 7 by the management for the purpose of ascertaining which is the majority union to enable the management to enter into fresh LTS is an industrial dispute to enable the appropriate Government to make a reference u/s 10(1)(c) of the Act. Learned Counsel for the petitioners has also confined his submissions to this issue only.

23. Mr. Goswami, learned Senior Counsel for the management submits that considering the definition of industrial dispute as defined u/s 2(k) of the Act, ascertainment of membership strength of a union cannot be a subject matter of industrial dispute. Neither can an inter-union rivalry be said to be a trade or industrial dispute for the purpose of adjudication u/s 10(1)(c) of the Act. Learned Counsel has contended that the management is in no way connected with the dispute between respondent Nos. 6 and 7. All that it wants is to find out which of the two unions enjoy majority support so that the management can enter into LTS with the majority union to ensure that such an exercise is not rendered futile by signing the LTS with an union which later on is found to be a minority union. Ascertainment of membership strength of rival unions by secret ballot method is a well established and well acknowledged procedure. Contending that issues arising in the pending Reference Case No. 7/2010 and the present Reference Case No. 1/2012 are completely different, since the latter is not relatable to any industrial dispute, learned Senior Counsel submits that the impugned reference is not maintainable and is, therefore, liable to be set aside and quashed. It is further contended that in the notice of conciliation dated 30-01-2012 the schedule was unilateral action of the management to conduct membership verification of the Unions by interview method. Therefore, he submits that the second question in the schedule of the impugned notification, viz., whether the management should treat respondent No. 6 as the majority Union did not arise at all. In support of his submissions, learned Senior Counsel has referred to and relied upon the following decisions:--

Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, .

J.T. Stratford and Son Ltd. v. Lindley and another, (1964) 3 ALL ER 102.

The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, .

State of Madhya Pradesh and Others Vs. Shardul Singh, .

Shri Ratan Kumar Dey and others v. Union of India and others, 1990 (2) GLJ 391.

General Secretary, Rourkela Sramik Sangh Vs. Rourkela Mazdoor Sabha and others, .

Food Corporation of India Staff Union Vs. Food Corporation of India and others, .

Puducherry Shasun Chemicals and Drugs Niruvana Thozhilalargal Muneerta Sangam v. Labour Officer and another.

24. Mr. S. Sarma, learned Counsel appearing for the State submits that since the issue relates to determination of membership strength of the rival unions, the said process would have a decisive bearing on the rights of the rival unions to represent the workmen. Therefore, in the opinion of the appropriate Government an industrial dispute exists, he submits. He, therefore, contends that the

reference is maintainable and the reference requires to be adjudicated upon by the Labour Court to ensure that lasting industrial peace prevails in the factory.

25. Mr. S. Chakraborty, learned Counsel for the respondent No. 6 while adopting the submission of Mr. Sarma, additionally submits that the subject matter of the impugned reference being identical with the subject matter of the pending reference where the issue is stoppage of deduction of membership fee of respondent No. 6 from the wages of the workmen, adjudication of the impugned reference should not be aborted at this stage. He further submits that as the management had already acknowledged respondent No. 6 as the majority union and entered into LTS with it in the past, refusal of the management to enter into fresh LTS with respondent No. 6 when it has already submitted fresh charter of demand on the plea of ascertaining membership strength of the rival unions is wholly untenable and without any justification

26. Mr. A. Dasgupta, learned Counsel for respondent No. 7 while denying the allegations made in the writ petition against his client, has, however, generally supported the stand of the petitioners. He submits that there is now a general consensus in the industrial sector that membership strength of a trade union should be determined or verified by secret ballot, which is considered to be the most fair and democratic method. He also contends that the issue raised in the impugned notification does not come within the ambit of industrial dispute as defined under the Act and, therefore, the impugned notification is not maintainable.

27. In his brief reply, Mr. Goswami, learned Senior Counsel for the petitioners submits that the management is not taking sides with any of the two unions. The present exercise is intended only to find out the majority union for signing of the LTS, while also acknowledging the rights of a minority union. He has submitted that there is nothing secretive about the membership roll of a trade union, which in any case a trade union is required to maintain and furnish to the concerned authorities. In this connection, learned Senior Counsel has referred to the provisions of the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Assam Rules framed thereunder. Winding up his submissions, learned Senior Counsel submits that the impugned reference is without jurisdiction and is, therefore, liable to be quashed. Consequently, the impugned order passed by the learned Industrial Tribunal is nonest in the eye of law and accordingly, the same should also be set aside.

28. The submissions made have been considered.

29. The moot question is whether process of membership verification of a trade union would amount to an industrial dispute so as to enable the appropriate Government, in this case the State Government, to make a reference u/s 10(1) (c) of the Act.

30. A reading of Section 10(1)(c) of the Act would indicate that existence or apprehension of industrial dispute is the sine qua non of making a reference

under the aforesaid provision. If the appropriate Government is of the opinion that an industrial dispute exists or is apprehended, it may refer the dispute or any matter which appears to be connected with or relevant to the dispute to a Labour Court or Industrial Tribunal for adjudication.

31. In view of above, a closer scrutiny of the expression "industrial dispute" becomes imperative. Industrial dispute is defined in Section 2(k) of the Act, which means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Section 2(k) of the Act is under:--

2(k). "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

32. From a close analysis of the above definition, it is seen that there are three parts,

(i) there has to be a dispute or difference,

(ii) the dispute or difference must be between employers and employers or between employers and workmen or between workmen and workmen,

(iii) the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

33. As explained by the Apex Court in the case of Workmen of Dimakuchi Tea Estate (supra), the first part refers to the factum of a real or substantial dispute, the second part to the parties to the dispute and the third part to the subject matter of that dispute. The subject matter may relate to any of two matters, namely (i) employment or non-employment and (ii) terms of employment or conditions of labour of any person. In that case, the Apex Court was examining the expression "any person" as appearing in Section 2(k) of the Act. While taking the view that the expression "any person" must be one in whose employment or non-employment, terms of employment or conditions of labour, the workmen as a class have a direct or substantial interest, the Apex Court held that the industrial dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other party.

34. In J.T. Stratford (supra), it was held in the context of Section 5 (3) of the Trade Disputes Act, 1906, which defines "trade dispute", that inter-union rivalry prima facie do not come within the statutory definition of trade dispute.

35. In a recent decision of the Madras High Court in the case of Puducherry Shasun Chemicals and Drugs Niruvana Thozhilalargal Muneerta Sangam and

another (supra), it has been held that grant of recognizance of a union cannot be brought u/s 2(k) of the Act and that it cannot be the subject matter of an industrial dispute.

36. As has been held by the Hon"ble Supreme Court in Shardul Singh (supra), the expression "conditions of service" is an expression of wide import. It has been held that the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc.

37. The second schedule to the Act enumerates the matters which are within the jurisdiction of Labour Courts. As per Section 7 of the Act, Labour Courts are required to adjudicate industrial disputes relating to any matter specified in the second schedule, which is as under:--

THE SECOND SCHEDULE

(See Section 7)

MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

38. Since all matters other than those specified in the third schedule would also be within the jurisdiction of Labour Courts, matters which are enumerated in the third schedule, which are matters within the jurisdiction of Industrial Tribunals, may also be looked into, which is as follows:--

THE THIRD SCHEDULE

(See Section 7-A)

MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holidays.

5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

39. A trade union is required to be registered under the Trade Unions Act, 1926. "Trade dispute" under the Trade Unions Act has been given the same meaning as under the Act. Trade union is defined u/s 2(h) of the Trade Unions Act. u/s 6 of the said Act, to be entitled to registration, a trade union must provide a list of its members with adequate facilities for its inspection. To maintain its registration, a trade union must have as its members not less than ten percent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in the concerned establishment or industry. A trade union is also required to submit annual return to the Registrar of Trade Unions u/s 28 of the Trade Unions Act wherein the number of members have to be disclosed.

40. Even u/s 3 of the Industrial Employment (Standing Orders) Act, 1946, the employer while submitting the draft standing orders, is also required to furnish a statement giving particulars of the workmen employed in the industrial establishment including the name of the trade union to which they belong.

41. Thus, it can be seen from the above that there is nothing secretive about ascertainment of membership strength of a trade union. Neither can there be any prohibition on disclosure of an union's membership roll. In fact, disclosure of the same is a statutory requirement under various enactments. Again, to find out the actual strength of a union, the secret ballot method is being gradually accepted. The Apex Court in the case of Food Corporation of India Staff Union (supra) has observed as under:--

1. Collective bargaining is the principal *raison d'être* of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of Trade Unions Act, 1926. This gives a stamp of due formation of the trade union and assures the mind of the employer that the trade union is an authenticated body; the names and occupation of whose office bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade union, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any

arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employers should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The "check off system" which once prevailed in this domain has lost its appeal; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking.

42. Therefore, from a careful assessment of the discussions made above, it can be said that to be an industrial dispute, all the three components comprising the definition of industrial dispute as highlighted in paragraph 33 above, must co-exist. In the absence of even one, the dispute will not be an industrial dispute. Ascertainment of membership strength of a trade union per se would not be a dispute relatable to the employment or non-employment or the terms of employment or the conditions of labour of the workmen working in the factory of the management. Thus, the conclusion is inevitable that the process of conducting membership verification of rival unions by the management would not be an industrial dispute as per the statutory definition of industrial dispute u/s 2(k) of the Act.

43. In so far the second question in the impugned notification, namely, as to whether the management should treat respondent No. 6 as the majority union, is concerned, it does not arise for consideration at all as the same was not a subject matter of the conciliation proceeding as would be evident from the notice of conciliation dated 30-01-2012 where the schedule was, alleged unilateral action of the management to conduct membership verification of the unions. In *Sindhu Resettlement Corporation Limited* (supra), the Hon'ble Supreme Court held that if no dispute is raised by the employee with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. A mere demand to a Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute.

44. The submission of the respondent No. 6 that the subject matter of the pending reference being Reference Case No. 7/2010 and the impugned reference are identical does not appeal to the Court. In the former, the issue is validity of the action of the management in stopping deduction on account of membership subscription from the wages of the workmen whereas in the impugned reference, the issue is verification of the membership of the two unions which in any case, they are statutorily required to maintain and furnish to various authorities under different enactments. The two issues therefore cannot be said to be identical.

45. In view of the above discussion, this Court is of the considered opinion that the impugned reference is not maintainable and that the State Government

committed an error in issuing the notification dated 02-06-2012. As the reference itself has been held to be not maintainable, independent scrutiny of the order of the Industrial Tribunal dated 18-06-2012 is considered not necessary. Accordingly, the impugned notification dated 02-06-2012 and order dated 18-06-2012 are hereby set aside and quashed.

46. Regarding the prayer of the petitioner to direct the State to provide necessary assistance to the management to carry out membership verification of respondent Nos. 6 and 7, this Court is not inclined to issue any such direction as it is an internal matter of the petitioners.

47. Writ petition is allowed to the extent indicated above. However, there will be no order as to cost.