

(1992) 03 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2995 of 1987

Hindustan Zinc Ltd.

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1992) 1 RLW 493 : (1992) WLN 44

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—The petitioner, by this writ petition, has challenged the order Annexure. 6 passed by the Special Secretary to the Government dated March 6, 1987, by which the Government referred the following dispute for adjudication to the Labour Court, Udaipur:

D;k mi egkizcU/kd] fgUnqLrku ftad fy- nsckjh ?mn;iqj? ds }kjk Jh xksikyflag iq= Jh tloUr flag Vksdu uEcj 12134 okVj lIykbZ QkeZ] Mcksd ?mn;iqj? dks Isok eqDr djuk mfpr ,oa oS| gS \

;fn ugha rks Jfed fdl jkgr ,oa jkf"k dks izkIr djus dk vf/kdkjh gSA

2. Respondent No. 2 Gopal Singh was working with the petitioner as a labour, whose services were terminated as a measure of disciplinary action by the petitioner on May 12/14, 1973. Gopal Singh did not file any appeal against the order of termination of his services and rest contended with the termination till December 6, 1983. On December 6, 1983, he filed a conciliation application before the Conciliation Officer, Udaipur. The petitioner contested this application and filed reply to the same. The conciliation proceedings ended in failure and the Conciliation Officer submitted the failure report to the Government of Rajasthan. The Government, vide its order dated April 18, 1985 (Annexure.3) declined to refer the dispute for adjudication to the Labour Court. The respondent No.2

Gopal Singh again made a representation to the State Government for referring the dispute for adjudication to the Labour Court, Udaipur, and on his subsequent representation Annexure.4, the petitioner was asked to submit his reply so that the proper order may be passed on the application made by the workman. The petitioner submitted its reply, but the Labour Commissioner, Jaipur, and the State Government, after considering the reply referred the aforesaid dispute vide Annexure.6 dated March 6, 1987, for adjudication to the Labour Court, Udaipur. It is against this order making a reference of the dispute for adjudication to the Labour Court that the petitioner has referred this writ petition.

3. Heard learned Counsel for the parties and perused the record of the case.

4. The following two points require consideration in the present case:

(1) Whether the State Government has powers to refer the dispute for adjudication to the Labour Court when once it has refused to do so; and

(2) whether the Government was justified in making the reference after fourteen years without following the principle of natural justice "Audi alter em Partem"

5. Now, taking the first question raised by the learned Counsel for the petitioner that whether the State Government is precluded from exercising the powers u/s 10(1) of the Industrial Dispute Act, 1947, when it has already refused to exercise it. The function of the Government u/s 10 of the Industrial Dispute Act, 1947 (hereinafter referred as "the Act") is purely an administrative function and the principle of res judicata is not applicable and no finality can be attached to such type of order. The only requirement of Section 10 of the Act is that there must be some material with the Government which may enable the Government to form an opinion whether an industrial dispute exists or apprehended. Earlier decision taken by the Government refusing to refer the dispute will not affect the jurisdiction of the Government u/s 10(1) of the Act to refer the dispute subsequently. Refusal of the Government to refer the dispute amounts to refusal to exercise the powers and not that it has exercised the power. The powers of the Government can be exhausted only when it is exercised and not on account of refusal to exercise the same. When the Government declined to make a reference then that will amount only to refusal to exercise the power. Exercise of the power is a positive act of making a reference and not refusing to exercise the same. The refusal amounts only to deferment of the exercise of the power and not the exercise of the power. The language of Section 10(1) of the Act makes it very clear that if some new facts come to the knowledge of the Government regarding the existence of an industrial dispute then the Government has power to re-consider the question regarding the existence of the industrial dispute and can refer the same for adjudication to the Labour Court and earlier declining to refer the dispute will not come in the way of the Government to refer the dispute on the basis of the fresh materials, which were produced before the Government and the Government is entitled for re-consideration of its earlier, decision. The first point is, therefore, decided against the petitioner and it is held that the

Government is competent to reconsider its earlier decision and can refer the dispute at a subsequent stage.

6. The next question, which requires consideration is whether the Government was justified in making the reference of the industrial dispute vide Annexure.6 after a lapse of fourteen years without following the principle of natural justice. So far as the question of giving an opportunity of hearing to the petitioner before making the reference is concerned, after the receipt of the fresh representation, the petitioner's explanation was called by the Joint Labour Commissioner vide Annexure.4 and the petitioner submitted his reply vide Annexure 5. It is only after giving an opportunity of hearing to the petitioner that the order Annexure.6 was passed. It, therefore, cannot be said that the petitioner was not given any opportunity to represent its case before making the reference to the Labour Court by the Government. Even otherwise, it has been held by the Division Bench of this Court in the case of *Good Year India Limited, Jaipur v. The Industrial Tribunal, Rajasthan, Jaipur* (D.B. Civil Writ Petition No. 290 of 1987 - decided on May 8, 1968), that the principle of "audi alterem partem" is not applicable and the Government is not bound to give notice to the parties or to hear them before making the order of reference. In the present case, the petitioner was given an opportunity to represent its case and, therefore, there was no violation of the principle of natural justice in this case.

7. Then comes the question : whether the Government was justified in making the reference after the lapse of fourteen years of the existence of the so called industrial dispute? The services of the non-petitioner No.2 Gopal Singh were terminated by the petitioner with effect from May 14, 1973, and the respondent No.2 rest contended with the order of termination nearly for about ten years and made an application before the Conciliation Officer on December 6, 1983. The conciliation proceedings ended in failure and the Government, vide its order dated April 18, 1985, refused to refer the dispute, but subsequently, vide its order dated March 6, 1987, referred the dispute to the Labour Court. Though no limitation is provided u/s 10(1) of the Act to refer the dispute for adjudication by the State Government but it must be borne in mind that it will be inequitable to refer the State Claim for adjudication after the lapse of about fourteen years as it will likely to adversely affect the industrial harmony by way of reviving the old controversy. Though the words "any time" appearing in Section 10 of the Act does not admit any limitation to the power of the State Government to refer the dispute for adjudication, but the same cannot be exercised in an arbitrary manner. An industrial dispute should not be referred, which already stood settled by the lapse of time. It has been held by the Supreme Court in the case of : *Jharkhand Collieries (P.) Ltd. v. Central Government Industrial Tribunal* 1960 (II) LLJ 71 that the policy of industrial adjudication is that every State Claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay, as, apart from the obvious risk to industrial peace from the entertainment of claim after long lapse of time, it is necessary, also, to take into account the unsettling effect, which it is likely to have on the employers financial

arrangements and to avoid dislocation of the industry. In the present case, the delay of ten years for raising the dispute has not been explained by the respondents and earlier the State Government, declining to make reference on the ground of delay, also, but later on, while passing the order Annexure.6, even did not consider the ground of delay and ignored the same.

8. Now, coming to the order Annexure.6, after having declined to refer the dispute for adjudication, the Government, if subsequently chooses to make a reference of the Industrial dispute for adjudication to the Labour Court, which was previously existed or apprehended then while referring the dispute, it is desirable that the Government must give reasons showing that new facts have come to the light or there was some misunderstanding or misapplication of mind by the Government as to the existence of the fact or there is any other relevant consideration for referring the dispute to the Labour Court. It is not discernable from the order Annexure.6 that any new fact had come to the light or the Government had misunderstood the existing facts or there was any other relevant consideration and, therefore, the reference Annexure.6, made by the Government for adjudication of the dispute deserved to be quashed.

9. In this view of the matter, the writ petition, filed by the petitioner, is allowed and the order Annexure.6 passed by the Special Secretary to the Government, Department of Labour, Rajasthan, Jaipur, dated March 6, 1987, is quashed and set-aside.