

(2001) 03 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 4460 of 1992

Hira Cement Workers Union	Vs	APPELLANT
State of Orissa and others		RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 10

Citation : (2001) 92 CLT 184 : (2001) 91 FLR 979 : (2001) 2 LLJ 545 : (2001) 1 OLR 447

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : M/s Sanjit Mohanty, N.C. Sahoo, S. Panda and A.K. Patnaik, for the Appellant; M/s S.B. Nanda, B.K. Patnaik, A.K. Misra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—A registered Trade Union being aggrieved by order dated February 12, 1992 of the Labour and Employment Department" of the Government passed under sections 10(1) and 12(5) of the Industrial Disputes Act, 1947, refusing to refer an industrial dispute relating to termination of services of 45 workmen, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

2. For better appreciation, the facts are briefly stated herein below : Opp. party No. 2 - Hira Cement Works is a Cement Factory set up by the Industrial Development Corporation of Orissa. M/s. Sivens Engineering Enterprises (opp. party No. 3) was the labour contractor who had supplied workmen to opp. party No. 2. On 13-3-1991, the labour contractor (o. p. No. 3) served notice of termination of services of 45 workmen, vide Annexure-1. The petitioner-Union filed a complaint on 27-3-91 before the Asst. Labour Officer-cum-Conciliation Officer, Bargarh with a request to initiate a conciliation proceeding. However, the

conciliation proceeding ended in a failure report submitted u/s 12(4) of the I. D. Act with an observation that no industrial dispute exists between the petitioner and opp. parties 2 and 3. In spite of receipt of failure report, the State Government adopted dilly-dally tactics and did not refer the matter for adjudication u/s 10(1) of the I. D. Act and the petitioner-Union was constrained to file a writ application before this Court being O. J. C. No. 4423 of 1991. This Court on 1-11-91 disposed of the writ application with following observations ;

"We would accordingly direct that the State of Orissa represented through the Secretary, Labour & Employment Department (o. p. 1) to pass appropriate orders in accordance with law on the failure report stated to have been submitted on 22-4-91 within a period of three months from the date of receipt of this order, xx xx"

On 12-2-1992 opp. party No. 1 passed an order u/s 10(1) read with section 12(5) of the I. D. Act refusing to refer the dispute relating to termination of services of 45 workmen engaged by contractors. The relevant extract of the order is quoted herein below :

"On consideration of the above referred conciliation failure report, the State Government are satisfied that there is no case for reference to adjudication as there exists no employer and employees relationship between the principal employer and the contract labourer."

Said order is impugned in this writ application.

3. It is submitted that the Government while exercising its power u/s 10(1) of the Act, acted illegally in entering into the merits of the dispute and the order refusing to refer the matter for adjudication is illegal and contrary to law.

A counter affidavit has been filed on behalf of the State Government, taking the stand that under sections 10(1) and 12(5) of the I. D. Act, the State Government has the authority to consider the failure report and decide as to whether it is a fit case for reference to the Industrial Tribunal or "nor. It is further stated that the status of the members of the petitioner-Union being that of contract labourers and the dispute arising out of the termination, the grievance, if any, can be adjudicated only under the Contract Labour (Regulation and Abolition) Act; 1970 and the Central Government is the appropriate authority to mitigate the same.

Another counter is filed on behalf of opp. party No. 2 IDCOL Cement Ltd. reiterating the stand taken before the Conciliation Officer and emphatically stating that "Industrial Disputes Act" is not applicable as opp. party No. 2 was not the employer at any point of time and that the provisions of Industrial Disputes Act are not applicable.

4. I have heard the learned counsel for both the parties at length. In support of the contention that appropriate Government while exercising its power u/s 10(1) of the Act cannot decide the dispute itself; the learned counsel for the petitioner relied upon the decisions reported in Telco Convoy Drivers Mazdoor Sangh and

Another Vs. State of Bihar and Others,

5. The modus operandi to be adopted by the State Government while dealing with the matter u/s 10 of the Act came before the Hon"ble Supreme Court in the case of Sultan Singh Vs. State of Haryana and another, and it was held :

"An order issued u/s 10 of the Act is an administrative order and the Government is entitled to go into the question whether industrial dispute exists or is apprehended and it will be only a subjective satisfaction on the basis of material on record and being an administrative order, no lis is involved."

The Hon"ble Supreme Court in the case of the Secretary, Indian Tea Association v. Ajit Kumar Barat 2000 L. L. R. 337 summarised the law as follows :

1. The appropriate Government would not be justified in making a reference u/s 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference :

2. The order of the appropriate Government making a reference u/s 10 of the Act is an Administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi judicial order ;

3. An order made by the appropriate Government u/s 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government ;

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus and ;

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

Thus, the power of the Government u/s 10 of the I. D. Act is not an empty formality. Appropriate Government would be justified in making a reference only, if it is satisfied on the facts and circumstances brought to, its notice that an "industrial dispute" exists or is apprehended "Industrial dispute" as per Clause (b) of section 2 of the Act means, inter alia a dispute or difference between "employees" and "employers" or between "employers and workmen". Before making a reference the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended. Further the Government has to be satisfied that the Industrial Disputes Act is possible and/or the dispute can be adjudicated under the said Act. These are, in my opinion, the pre-requisites before making a reference.

6. The question as to whether a reference can be made with regard to abolition of contract labour or retrenchment came up for consideration before the Supreme Court in the case of *Vegoils Private Limited Vs. The Workmen*, and the Hon"ble Supreme Court held that the Industrial Disputes Act has no application and the jurisdiction vests under the Contract Labour (Regulation & Abolition) Act, 1970. Admittedly, in the present case, all the workmen were engaged by the labour contractor. While exercising the powers conferred u/s 10(1) of the I. D. Act, the Government, has to arrive at an administrative decision as to whether there exists an industrial dispute or industrial dispute is apprehended. In the present case, the Government after consideration of the materials *prima facie* arrived at a conclusion that there is no case for reference as there exists no employee and employer relationship between the principal employer and the contract labour. The Court cannot; therefore, canvass the order of reference closely to see if there is any material before the Government to support its conclusion, as if it was a judicial or quasi judicial determination. That apart, the question whether an industrial dispute exists is a question of fact to be determined on the material available before the Government and only when the Government is satisfied that any industrial dispute exists or is apprehended, it would be open to the Government to refer the matter.

The Apex Court in the case of *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, while dealing with Government"s power observed that when appropriate Government considered the question as to whether a reference should be made u/s 10(1) of the I. D. Act, or not, on receipt of failure report, it has to be *prima facie* satisfied of the merits.

In the case of *Alekh Bihari Rout v. Union of India and another* 2000(I) L. L. J. 256, this Court has observed :

"It is open to the State Government to take broad features into consideration while exercising jurisdiction u/s 10(1) of the Act. When the appropriate Government considers the question as to whether a reference should be made u/s 12(5), it has to act u/s 10(1) of the Act. and section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4), the appropriate Government ultimately exercises its power u/s 10(1), subject to this that section. 12(5) imposes an obligation on it to record reason for not making the reference when the dispute has gone through conciliation and failure report has been made u/s 12(4). xx xx"

This Court in the case of *The Management of Hira Cement Works Vs. The Union of India (UOI) and Another*, relying upon the ratio of the decision in *Vegoils Pvt. Ltd.*"s case (*supra*) held as follows :

"...In our opinion, the distinction is of no consequence and the ratio of the

Vegoils"s case would equally apply to the facts and circumstances of the present case. Both u/s 10 as well as u/s 10(1) of the Industrial Disputes Act, what is referred is an "industrial dispute" and the preconditions for making the reference also are the same, the only difference being that whereas u/s 10, it is the State Government which makes the reference, u/s 10(1), the parties to the dispute make the reference. But if the reference is not entertainable on the ground that it is specifically provided for in a special statute like the Contract Labour (Regulation & Abolition) Act, then, the adjudicator will have no jurisdiction to entertain the same whether it has come before him by way of a reference u/s 10 or by way of an agreement u/s 10(1) of the Industrial Disputes Act."

Law is well settled that where a power has been given to do a certain thing in a certain way, the thing must be done in that way or not at all, and other methods of performance are necessarily forbidden. In view of the fact that the Contract Labour (Regulation & Abolition) Act, 1970 provides for prohibition of employment of contract labour and the mode of such prohibition is stipulated in section 10 of the said Act, it would be wholly incompetent for the same matter to be agitated by way of an industrial dispute. In the circumstances, the authorities under the Industrial Disputes Act will have no jurisdiction to decide the lis. The grievances of contract labourer and retrenchment of employees of a contractor can only be mitigated by appropriate Government in accordance with the provisions of the Central Act.

7. The petitioner, in course of bearing, has submitted that a reference can be made to decide as to whether the demand of the Workers" Union to regularise contractor"s workmen engaged through M/s. Sivens Engineering Enterprises (contractors) by the management of IDCOL Cement Ltd. But then, the petitioner-Union has not made such a prayer before this Court. The dispute as to whether the contractors workmen that too, as long back as in the year 1991. Law is well settled that the jurisdiction to decide about abolition of contract labour, or to put it differently, to prohibit employment of contract labour is now to be adjudicated in accordance with section 10 of the Contract Labour Abolition Act. Therefore, it is proper that the present question is to be dealt with by the Central Government under the said Act and in my opinion, the I. D. Act has absolutely no application.

In view of categorical finding of this Court in the decision referred to supra, which is binding upon me, I hold that the State Government rightly refused to exercise the power conferred upon it u/s 10(1) of the Act and the impugned order (Annexure-5) suffers from no infirmity.

8. In the result, I find no merit in the present writ application, which is, accordingly, dismissed. The parties to bear their own costs,

9. Writ application dismissed.