

(1968) 11 OHC CK 0011
In the Orissa High Court

Hochtief Gammon

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-11-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1969) 35 CLT 90 : (1969) 2 LLJ 207

Hon'ble Judges : S. Barman, C.J;S. Acharya, J

Bench : Division Bench

Judgement

S. Barman, C.J.—The petitioners, Hochtief Gammon, a firm of civil engineers and contractors having their office at Rourkela, challenge the order of the Government of Orissa, Labour Department, dated 27 July 1964, in Industrial Dispute Case No. 6 of 1860 in the Court of the presiding officer, industrial tribunal, Orissa. By the said order Government held that they did not find any material, on the basis of the petition dated 20 May 1964 filed by the petitioners, to include Hindusthan Steel, Ltd., Rourkela, as a party in the said case.

2. On 14 November 1960, the Government of Orissa referred to the industrial tribunal an alleged industrial dispute between the petitioners and their workmen. The issue referred for adjudication was this:

Whether the workers of Hochtief Gammon, civil engineers and contractors, Rourkela, are entitled to bonus, and if so, what should be the quantum ?

3. In the said industrial dispute case the petitioners made an application to the industrial tribunal to make Hindusthan Steel, Ltd., Rourkela, a party, on the ground that the petitioners entered into an agreement with Hindusthan Steel, Ltd., for construction of foundation and civil engineering works for the rolling mills at Rourkela. According to the petitioners, Hindusthan Steel, Ltd., is the employer and it alone is entirely responsible for payment of wages and other remuneration of any kind to the workmen engaged on their works for and on their behalf and that there is no responsibility on the part of the petitioners for

such payment. On the said application for adding Hindusthan Steel, Ltd., as a party, the industrial tribunal held that he had no jurisdiction to add it as party. Against this order of the industrial tribunal the petitioners filed a writ petition being Original Jurisdiction Case No. 128 of 1961 before the High Court for a direction on the tribunal to add Hindusthan Steel, Ltd., as a party. On the said writ petition, this High Court found that the application was premature as the tribunal had not passed any final order and accordingly the said petition was dismissed. Against the said order of this Court the petitioners went up in appeal to the Supreme Court who, while holding that the tribunal had implied power to add parties, decided that in the present case Hindusthan Steel, Ltd., cannot be regarded as a necessary party.

4. On 11 May 1964 the petitioners filed an application before the State Government praying that in the interest of justice and for finality In the matter, Government can exercise the powers vested in it under Sections 10(1)(d) and 10(5) of the Industrial Disputes Act, 1947, and prayed for modification of the referring order dated 14 November 1960 by adding Hindusthan Steel, Ltd., as a party to the reference and also adding an additional clause at the end, namely:

If bonus is payable, who is the employer and who is responsible for payment of bonus to the workmen ?

On 27 July 1964 the Government of Orissa, Labour Department, passed the impugned order stating that, after due consideration, Government do not find any materials on the basis of the said application of the petitioners to Include Hindusthan Steel, Ltd., as a party to the industrial dispute case.

5. In our opinion, the question as to who are the real employers does not relate to an industrial dispute and as such it is not open to the petitioners to contend that the Hindusthan Steel, Ltd., is their real employer.

6. It was also contended on behalf of the petitioners that the order of the State Government is vitiated by consideration of materials In that they did not consider prima facie materials for decision of the question as to whether there was privity of contract between the workmen of Hochtief Gammon and Hindusthan Steel, Ltd.

7. These arguments urged on behalf of the petitioners lose their force in view of the well- settled position in law that an order of Government under Sections 10(1)(d) and 10(5) of the Industrial Disputes Act is an administrative order and the Court has no jurisdiction to Interfere with the same. This view fully supported by the decision of the Supreme Court In State of Madras Vs. C.P. Sarathy and Another, where It was held that in making a reference u/s 10(1) the Government is doing an administrative act and the fact that It has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there Was, material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt it will be open to a

party seeking to impugn the resulting award, to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that therefore, the tribunal had no jurisdiction to make the award But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of the case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on the matters.

8. In the view that have taken of the case, .on the merits, as dismissed above, it is unnecessary to deal with the other points raised and the various decisions relied on, on behalf of both parties herein. In the result, the writ petition is dismissed with costs. Hearing fee Rs. 100.

S. Acharya, J.

9. I agree.