

(2012) 02 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4080 of 2005 (S)

Hukumchand Jute and Industries

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 25N, 25N(6)

Citation : (2012) ILR (MP) 2102 : (2013) 2 LLN 164

Hon'ble Judges : Shantanu Kemkar, J;S.K. Seth, J

Bench : Division Bench

Advocate : G.M. Chaphekar with G.S. Patwardhan and D.M. Sharma, for the Appellant; Mini Ravindran, Dy. G.A. for the respondent No. 1/State and Rajesh Chand, for the respondents No. 2 to 20, for the Respondent

Judgement

Shantanu Kemkar, J.—This petition under Article 226/ 227 of the Constitution of India is directed against the order dated 18.09.2003 (Annexure P/11) passed by the Labour Commissioner Madhya Pradesh as also the award dated 22.09.2005 passed by the Industrial Tribunal of Madhya Pradesh in Case No. 16/2003 (Annexure P/24). Brief facts necessary for disposal of this writ petition may be stated, as under :-

The petitioner company - Amlai Paper Mill is engaged in manufacturing of caustic soda in liquid form since 1965 in its Unit namely Hukumchand Jute industries and undisputedly, Madhya Pradesh Industrial Relations Act, 1960 is applicable to it. On account of demand for caustic soda flakes in the market, the petitioner set up a section known as Fusion Plant in the year 1988 for converting liquid caustic soda into flakes. However, market price of the flakes fell down and it was not found to be profitable by the petitioner to manufacture the flakes. As a result, it stopped manufacturing of the flakes. According to the petitioner, in the process of manufacturing of flakes, it had assigned the job of stitching the jute bags to a contractor, who employed workers on his roll and executed the said work through such workers like the present private respondents. However, on account of

stoppage of production of flakes, there was no work left for these contract labours (the private respondents).

2. The petitioner, with a view to retrieve the company from the situation of huge losses, which it had suffered in manufacturing the flakes submitted an application u/s 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947) on 22.04.2003 (Annexure P/4), seeking permission of the Labour Commissioner (Specified Authority) to retrench 18 employees, the private respondents, who were on the establishment of and who were employed by the contractor to execute the job assigned to him.

3. On receipt of the said application dated 22.04.2003 (Annexure P/4), the Labour Commissioner issued notices to the said employees the private respondents. Despite service of notices, none of them appeared before the Labour Commissioner. The Labour Commissioner heard the petitioner on the said application and vide order dated 19.06.2003 (Annexure P/5) granted permission to the petitioner to retrench the said contract employees/private respondents.

4. Thereafter, the private respondents submitted an application on 18.07.2003 (Annexure P/7) u/s 25N(6) of the Act of 1947 before the Labour Commissioner and also filed Writ Petition No. 4744/2003 before principal seat of this Court at Jabalpur, seeking direction to decide the said application expeditiously. In the said Writ Petition No. 4744/2003, on 04.08.2003, direction was issued by this Court to the Labour Commissioner to decide the said application filed u/s 25N(6) of the Act of 1947 within one month. Thereafter, the Labour Commissioner considered the said application and passed an order dated 11.09.2003 (Annexure P/10) and referred the question framed by it in the said order for adjudication to the Industrial Tribunal. In terms of the said order dated 11.09.2003 vide letter dated 18.09.2003 (Annexure P/11) the Labour Commissioner referred the questions framed by him to the Industrial Tribunal mentioning it to be a reference u/s 10 of the Act of 1947.

5. The said order dated 11.09.2003 passed by the Labour Commissioner was challenged by the petitioner before the Principal Seat of this Court at Jabalpur in Writ Petition No. 1474/2003. The said writ petition was dismissed on 08.10.2003, observing that there is no scope to entertain the submissions and giving finding at thus juncture on the submissions made by the petitioner and that in the order of reference, no interference is called for at the behest of the employer.

6. On receipt of the communication dated 18.09.2003, the Industrial Tribunal registered the reference as Case No. 16/2003. The petitioner submitted its objections before the Industrial Tribunal about the maintainability of the reference on various grounds, including the ground (a) that the reference made to it is incompetent, as Section 10 contained in Chapter III of the Act of 1947 is not applicable in view of the fact that the provisions of Madhya Pradesh Industrial Relations Act, 1960 are applicable to the petitioner-undertaking, (b) that under the Scheme of Section 25N(6) of the Act of 1947, the Labour Commissioner, who

is the Specified Authority is either to hear the application himself or is to refer the matter for adjudication to the Industrial Tribunal, whereas, in the present case, on the application u/s 25N(6), the Labour Commissioner has passed the order dated 11.09.2003 in contravention of the said provision and has wrongly referred the question framed by him for decision to the Industrial Tribunal, treating it to be reference u/s 10 of the Act of 1947.

7. During the pendency of the reference before the Industrial Tribunal taking note of the objections raised by the petitioner, more particularly about the mention of Section 10 in the reference, the private respondents approached to the Labour Commissioner making prayer to modify the order of reference. The Labour Commissioner, without issuing notice and giving opportunity of hearing to the petitioner, vide order dated 01.02.2005 (Annexure P/16) modified his earlier order dated 18.09.2003 (Annexure P/11) which was passed in continuation of the order dated 11.09.2003 and ordered for substituting paragraph 4 by mentioning therein as Section 25N(6) in place of Section 10 of the Act of 1947.

8. The aforesaid order dated 01.02.2005 (Annexure P/16) passed by the Labour Commissioner was challenged by the petitioner before this Court in Writ Petition No. 1331/2005 (s). This Court while allowing the petition vide order dated 29.03.2005 directed the Labour Commissioner to give an opportunity to both the parties (the petitioner and the private respondents) and to pass a fresh order on the prayer for modification of the reference made by the private respondents. The said order passed by this Court in Writ Petition No. 1331/2005 was brought to the notice of the Industrial Tribunal by informing the Tribunal that about the reference in question, the modification application is to be decided by the Labour Commissioner in terms of the order passed in W P No. 1331/2005. It was also brought to the notice of the Industrial Tribunal that the matter is fixed for hearing before the Labour Commissioner on 07 04.2005. The Industrial Tribunal taking note of the fact of passing of order by this Court in Writ Petition No. 1331/2005 (s) and the fact that the matter is pending consideration before the Labour Commissioner, adjourned the case on 29.03.2005 to 12.04.2005. Thereafter, the case was adjourned by the Industrial Tribunal from time to time, awaiting decision of the Labour Commissioner on the prayer for modification. However, before the Labour Commissioner could decide the matter regarding the prayer for modification of the reference, in terms of the directions issued by this Court in Writ Petition No. 1331/2005, the Industrial Tribunal passed the impugned order dated 22.09.2005 (Annexure P/24). Feeling aggrieved, the petitioner has filed this petition.

9. It has been contended by the learned Senior Counsel for the petitioner that vide order dated 29.03.2005 this Court had allowed Writ Petition No. 1331/2005 (s) filed by the petitioner by quashing the modification of the reference order passed by the Labour Commissioner and the matter was remanded back to the Labour Commissioner for passing fresh order, after hearing both the sides. In the circumstances, it was incumbent upon the Industrial Tribunal to have waited for

the decision to be taken by the Labour Commissioner. However, although the Industrial Tribunal adjourned the reference for few dates for awaiting the decision of Labour commissioner, but thereafter all of a sudden without assigning any reason finally decided the reference. In support of this contention, copies of the proceedings of Industrial Tribunal have been submitted on record by the petitioner. Learned Senior Counsel further argued that the order passed by the Labour Commissioner on the application filed by the private respondents u/s 25N(6) of the Act of 1947 is contrary to the provisions contained in the said section. He argued that the Labour Commissioner could have either decided the review petition itself or could have sent the same to the Industrial Tribunal for decision. Instead of this, the Labour Commissioner firstly recorded a finding that no case for taking a contrary view than the view, which has already been taken, while passing the order of closure is made out, still he has referred the questions framed by it to the Industrial Tribunal for adjudication. He argued that such a course was not open to the Labour Commissioner, in view of the language employed in Section 25N(6) of the Act of 1947. He further argued that the reference order was actually passed by invoking provisions of Section 10 of the Act of 1947 whereas in view of the undisputed fact that the petitioner is covered under the Madhya Pradesh Industrial Relations Act, 1960, Section 10 of the Act of 1947 had no applicability to the petitioner's undertaking.

10. On the other hand, learned counsel appearing for the private respondents supported the impugned order and argued that the Industrial Tribunal has ample power to amend the reference made to it by the Labour Commissioner as it was merely a mention of wrong section, and as such, according to him, no infirmity can be found in the order of the Tribunal. He also supported the order of the Labour Commissioner making a reference.

11. Having considered the submissions made by the learned counsel for the parties, we are of the view that instead of going into various grounds canvassed before us during the course of hearing and the case law cited before us, which has bearing on the merits of the matter but is not relevant at this stage, keeping all the grounds open to be agitated at the appropriate stage, if required, the petition deserves to be disposed on the short ground that when this Court had passed an order on 29.03.2005 in Writ Petition No. 1331/ 2005 in the presence of both the sides, by quashing the ex-parte decision dated 01.02.2005 of the Labour Commissioner by which the Labour Commissioner had modified the award and when the Labour Commissioner was directed by this Court to pass fresh order on the application for modification of the reference, the Industrial Tribunal ought to have refrained itself from proceeding further in the reference and should not have passed the impugned award dated 22.09.2005. It is also clear from the proceedings of the Industrial Tribunal that it had adjourned the matter awaiting the decision of the Labour Commissioner on the application for modification as ordered by this Court but thereafter all of a sudden, the Industrial Tribunal proceeded to decide the reference without recording any reason for the same. Thus, in our considered view, the action of the Industrial Tribunal was without

any justifiable reason and the same cannot be sustained.

12. In the circumstances, the impugned award dated 22-09.2005, passed by the Industrial Tribunal in Case No. 16/2003 (Annexure P/24) is quashed. The Labour Commissioner is directed to comply with the order dated 29.03.2005 passed by this Court in Writ Petition No. 1331/2005(s), as expeditiously as possible, but not later than three months from the date of receipt of copy of this order. After the decision, as may be taken by the Labour Commissioner, the Industrial Tribunal shall proceed to decide the reference, in accordance with law. With the aforesaid direction, the writ petition stands disposed of.

No order as to costs.