
(2008) 07 DEL CK 0162

In the Delhi High Court

Case No : LPA No. 560 of 2000, CM No's. 4803 of 2007 and 8930 of 2008

Ircon International Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

General Clauses Act, 1897 — Section 3(60)

Industrial Disputes Act, 1947 — Section 10, 10(1), 10A, 12(4), 12(5)

Citation : (2008) 07 DEL CK 0162

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : B.P. Nagrath and B.L. Anand, for the Appellant; O.P. Khadaria and Deepak Khadaria Advs., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—This LPA has been filed by the petitioner/appellant aggrieved from the order passed by learned Single Judge dated 10.5.2000 in WP(C) No. 2402/2000 whereby the learned Single Judge dismissed the writ petition by repelling the contentions of the petitioner that respondent No. 5 who was appointed as French Interpreter is not a workman within the meaning of Industrial Disputes Act (hereinafter referred to as the said Act) or that the reference was not made by the Central Government because the objections raised by the petitioner were not part of the pleadings before the Presiding officer of the Labour Court. The learned Single Judge also observed that no other illegality committed by the Presiding Officer of the Labour Court in the impugned Award was pointed out so as to call for any interference under Article 226 of the Constitution of India and thus the petition being devoid of any substance was rejected.

2. The learned Counsel appearing for the petitioner/appellant before us again raised similar points which did not find favour with by the learned Single Judge.

During the course of proceedings one of the issue raised i.e., "respondent No. 5 was not a workman" was not pressed orally on 31.7.2007. This is also so stated by them in their additional affidavit dated 28.9.2007 in para 2 thereof, in the following words:

That the contention that French Translator cannot be called workman was given up by the appellant during oral arguments on the last date i.e, on 31.7.2007. However, the other contention that reference made by the State Government is void, was pressed.

3. Thus the only legal issue which arises for consideration is "whether the reference made in this case referring the disputes to the Presiding Officer Labour Court has not been made by the "Central Government" which admittedly is the appropriate Government in this case.

4. Admittedly the service of the fifth respondent/workman who was working in the corporate office of the appellant as French Interpreter was terminated by the appellant without following the provisions u/s 25 of the said Act. On being approached a reference was made by the Secretary (Labour) Government of Delhi u/s 10(1)(c) read with 12 (5) of the said Act vide Order No. F.24(2335)/92-Lab.1033-38, dated, 8.1.93 to the following effect:

Whereas on the report submitted by the conciliation officer, u/s 12(4) of the Industrial Disputes Act, 1947, IAC Kher, Secretary (Labour) Delhi Admn., Delhi satisfied that an industrial dispute in respect of the matters specified in the schedule below exists between the management of M/s Indian Railway Construction Company Ltd., (Govt. of India Undertaking), Palika Bhawan, Sector 13, R.K. Puram, New Delhi-66 and its workmen Sh. Ashit Shah C/o Shri Avdesh Singh, 796, Pocket 1, Janta Flats, Paschim Puri, New Delhi-63 and the same should be referred for adjudication to the labour court of Delhi constituted under the said act.

In exercise of powers conferred by Section 10 (1) (c), and 12(5) of the said Act, read with the Govt. of India, Ministry of Defence notification No. S-11011/2/75-DK (IA) Dated, the 14th April, 1975, I A.C. Kher, Secretary (Labour) Delhi Admn., Delhi hereby refer the said dispute to the Labour Court No. II at present presided over by R.K. Yadav for adjudication.

5. The termination of the workman was effected on 31.7.1990 which according to the workman was not done by following the provisions of the said Act as contained u/s 25F, G & H of the said Act. Undisputedly the management paid only Rs. 3025/- by means of cheque dated 31.7.1990 but did not pay any compensation nor offered it, to respondent No. 5 (workman).

6. In their written statement before the labour court the management did not plead that respondent No. 5 was not a workman or that the reference has not been made by the Appropriate Government without disputing the relationship of employer-employee between the parties. The only plea taken by them was that

the services of the respondent No. 5 were terminated in accordance with law. It may be appropriate to take note of Section 25 F of the said Act which reads as under:

25F Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until - one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Admittedly the management had not paid the compensation to the workmen as is payable at the time of termination.

7. On 25.9.1998 the management filed an application before the labour court to amend the written statement so as to raise a plea that the reference was not made by the Appropriate Government and that respondent No. 5 was not a workman. This application was opposed by the workman. Vide order dated 21.12.1998, the said application was dismissed by the Labour Court. The order dismissing the application was not challenged by the management. Consequently the Presiding Officer after recording the evidence of the parties adjudicated the dispute and gave his Award dated 10.12.1999 awarding reinstatement of the workman with continuity in service and payment of full back- wages. It is thereafter that the management filed the writ petition against the Award of the Presiding Officer on 5.5.2000 which was dismissed by the learned Single Judge vide order dated 10.5.2000. Hence this appeal.

8. The learned Counsel for the appellant during the course of his arguments has primarily raised the issue that the reference having been made by the Government of Delhi is illegal, by pleading that the Delhi government was not the Appropriate Government and it was the Central Government which was the Appropriate Government and therefore the reference itself was illegal. Consequently the entire proceedings are required to be quashed. He also tried to raise an issue that the Award directing reinstatement of the workman along with full back-wages and continuity in service is bad.

9. Learned Counsel appearing for respondent No. 5 on the other hand contended that the plea of the management about the jurisdiction of the Labour Court by assailing the reference as not made by the appropriate Government is without

any merits in as much as, firstly they never took any objection in this regard in their original written statement and secondly at the time when the reference was made, Central Government had delegated its powers to make a reference vide notification No. S-11011/2/75-DK (IA) Dated, the 14th April, 1975. Thus on account of the aforesaid delegation reference made by Secretary (Labour) Delhi Administration was made on behalf of the Central Government and therefore there was no infirmity in making the reference and consequently the Award given by Presiding Officer is valid.

10. Reference was also made to the Judgment given in the case of Leela Separators Pvt. Ltd. Vs. Secretary (Labour), Delhi Administration and Others, where the Division Bench of this Court held that in a union territory the powers of the State Government really means the power of the Central Government and as such the notification delegating such powers to the Secretary did not suffer from any incongruity and was valid.

11. In that case the issue which came up for consideration was as to whether the delegation made by the Central government to the State Government took care of the word "Appropriate Government" as mentioned u/s 39 2 (a)(ii) of the Act in respect of Union Territory of Delhi. The Division Bench dealt with all the aspects of the matter and came to the conclusion that the notification dated 14.4.1975 which was published in the gazette dated 26.4.1975 relied upon by the respondent is a notification which confers authority of the Central Government to the State Government in relation to Union territory of Delhi u/s 3, 10, 10A and other provisions of the said Act. The notification reads as under:

In exercise of the powers conferred by Section 39, Industrial disputes Act, 1947 (14 of 1947), the Central government herein directs that the powers of the State Government in regard to the Union territory of Delhi exercisable by it under Sections 3, 10 and 10A, Sub-section (5) of Section 12 and Sections 17, 33B and 36A of the said Act be exercisable also by the Secretary (Labour) of the Delhi Administration.

12. The Division Bench also held that the arguments addressed, "that the Central Government is not the State Government" is not valid. In this regard, it has been observed as under:

4. To my mind the answer is too simple to bear any elaborate discussion. The power to delegate is given by Section 39, Industrial Disputes Act. It says:

The appropriate Government may by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made there-under shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also -

a. Where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be

specified in the notification; and

b. Where the appropriate government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

So the question is, which is the "appropriate Government"

But, when this ex facie conclusion from the section is applied, it gives rise to the question: who or what is the "State Government" in a Union Territory, such as Delhi ? Section 3(60), general Clauses Act, 1897, provides the answer. Leaving out all the immaterial parts, the section reads:

In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, --

(60) State Government ---

(c) as respects anything done or to be done after the commencement of the Constitution(Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government."

This Makes it plain that in relation to a union territory, one must read "Central Government" for the "State Government" in Section 2(a)(ii), Industrial Disputes Act. So, the ultimate conclusion is that, in Delhi, the "Central Government" is the "appropriate Government" even in respect of disputes falling within Section 2(a) (ii).

7. Now, reading S. 39 in this light, it is apparent that the "Central Government" could, as the "appropriate Government", delegate the "powers of the State Government in regard to the Union territory of Delhi." The phrase "powers of the State Government" has reference to the division of power made by Section 2(a) between the Central Government and the State Government. In a Union territory, that division has no significance because the powers merge as there is only one Government, the Central Government it is different in a State, properly so called, which has a separate State Government. But, in a Union territory there is none. As its very name indicates, it is the exclusive domain of the Union. Therefore, in a Union territory, "powers of the State Government" really means "powers of the Central government", and the notification delegating powers to the Secretary (Labour) is not vitiated by any incongruity. As I see it, that is the end of the case, and the notification must be held to be valid.

13. A perusal of the aforesaid judgment makes it clear that in view of the delegation of powers in relation to union territory the powers of the Central Government to act as the Appropriate Government stands delegated to the State Government in regard to the Union Territory of Delhi. The phrase "powers of the State Government" has reference to the division of powers made in Section 2 (a) between the Central Government and the State Government which in a Union

territory has no significance as the powers merges, there being one Government i.e., Central Government.

14. Thus the submission made on behalf of the appellants has no legs to stand. More so when there is no challenge to the power of the delegation per se. As far as other matters are concerned no infirmity has been pointed out in the order passed by the learned Single Judge.

15. The learned Counsel for appellant tried to distinguish the judgment delivered by the DB by citing the case of Standing Conference of Public Enterprises (SCOPE) v. Government of NCT of Delhi 2007 (93) DRJ 616 delivered by Justice S.N. Dhingra taking a different view about the notification which delegated the power of the Central Government to the State Government. However, before us neither the authority of the delegatee nor the delegation itself has been challenged by the appellants. Moreover, the judgment of the Division Bench in M/s Leela Separators Pvt. Ltd. Case (supra) was not brought to the notice of the learned Single Judge. The same is the position in the other unreported Judgment cited by the appellant i.e., Baikunth Nath Dubey v. Labour Court, UP, Varanasi and Ors.(Ircon) decided on 24.5.1999 by learned Single Judge of Allahabad High Court.

16. As far as the other Judgments cited by the appellants i.e., Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, E.R. Jesuratnam v. Union of India and Ors. AIR 1981 SC 1595, as well as Management of Heavy Engineering Corporation Ltd., v. Presiding Officer, labour Court, and Ors. Jt. 1996 (9) SC 721 are concerned, they are also of no help to the appellant.

17. Even otherwise, it may be observed here that no document which might go to show that notification of 1975 was superseded after Delhi became a full fledged State has been filed on record. Consequently, the LPA filed by the appellant/management is dismissed with no order as to the costs.

CM Nos. 4803/2007 and 8930/2008

Dismissed.