
(1995) 12 AP CK 0052
In the Andhra Pradesh High Court
Case No : W.A. No. 904 of 1994

I.T.C. Ltd.

APPELLANT

Vs

Non-Pensioners Association and Others

RESPONDENT

Date of Decision : 14-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1996) 73 FLR 1736 : (1996) 1 LLJ 1106

Hon'ble Judges : N.Y. Hanumanthappa, J; B.K. Somasekhara, J

Bench : Division Bench

Advocate : G.R. Sreedharan, for the Appellant; M. Panduranga Rao Advocate For First Respondent and G.P. for Labour, For Respondents 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.:

1. This appeal is filed by the Management of the I.T.C. Limited questioning the legality and validity of the order dated April 13, 1994, passed by a learned single Judge of this Court in W.P.No. 4094 of 1994 directing the Government to refer the dispute for adjudication u/s 10 of the Industrial Disputes Act, 1947 (for short, hereinafter, "the Act").

2. A few facts which are necessary to dispose of this writ appeal are as follows: That the appellant is the management of the I.T.C. Limited. On October 24, 1986 it announced a scheme known Platinum Jubilee Pension Fund, making it applicable to workmen who are on rolls as on August 24, 1986 and onwards. The members of the first respondent association, who were retired from service prior to August 24, 1986 demanded benefits under the said scheme to them also, but the same were not extended to them, on the ground that the scheme is not applicable to the employees retired from service prior to August 24, 1986. So, the matter went to the Conciliation Officer i.e., the Dy. Commissioner, Guntur for conciliation. Since conciliation proceedings ended up in failure, the respondent

association sought for a reference by the Government u/s 10 of the Act, for adjudication of the matter Pending consideration of such a request, apprehending that the Government may reject the request for reference, the respondent association approached this Court in Writ Petition No. 4094 of 1994 with a prayer to direct the Government to make a reference of the dispute to the Labour Court, Hyderabad, u/s 10(2) of the Act. The appellant/Management was not made a party to the said writ proceedings. During the pendency of the said writ petition, the Government by its letter dated March 24, 1994, in Lr.No. 492/Lab.I/A2/94-1 Women's Development, Child Welfare and Labour (Lab.I) department informed the respondent association that the request for making reference is rejected on the ground that "retired employees cannot raise any demand with their previous employer because the relationship of employer and employee is not existing." This fact was brought to the notice of this Court, and the learned single Judge passed order dated April 13, 1994 holding that:-

".... The non-existence of relationship of employer and employee is no ground for not making a reference. If there is total lack of relationship between the employer and employee it is a different matter. But, if an employee was working and retired and has got some demands to make, the same is permissible to be complained to the Conciliation Officer and then later to the Government and the Government should act upon the same. As such, the impugned order dated March 24, 1994 through letter No. 402/Lab.I/A2/94-1, Women's Development, Child Welfare and Labour (Lab.I) department is set aside."

While holding so, the learned single Judge straightaway directed the Government to refer the dispute for adjudication u/s 10 of the Act within a period of two months from the date of receipt of this order. Subsequent to this order contempt proceedings were instituted and ultimately the Government passed orders referring the dispute for adjudication.

At this stage the appellant/management came to know that a writ has been issued. Challenging the order of the learned single Judge the appellant management filed this writ appeal.

3. Sri Kasturi, learned counsel for the appellant/management attacked the order of the learned single Judge on several grounds including its legality for having been passed in the absence of proper and necessary party, and its validity so much so that the learned single Judge straightaway directed the Government to pass orders in a particular manner i.e., referring the dispute for adjudication.

4. On a perusal of record and hearing of arguments, we find two important questions of law fall for our consideration in this writ appeal. Those are:-

1. Whether this Court, while exercising jurisdiction under Article 226 of Constitution of India, can issue a writ of mandamus in the absence of a party who will be vitally affected by such a writ at a later stage?

2. Whether this court while exercising powers under Article 226 can direct the

Government to make a reference u/s 10 of the Industrial Disputes Act, 1947, or it can only direct the Government to consider or reconsider the request for reference?

5. At the outset, we are of the opinion that when in fact the management was not a party to the writ proceedings and the order of the learned single Judge went against it, proper forum for the management was to file review petition seeking review of such an order. However, since the management has chosen to file an appeal, we proceed to answer the above questions.

6. The first contention of Sri. Kasturi, learned counsel for the appellant is that the order of the learned single Judge suffers from illegality and irregularity as it was passed without considering the question of non-joinder of proper and necessary parties and issuing writ of mandamus in the absence of the party who will be vitally affected by such an order and learned single Judge should have dismissed the writ petition for non-joinder of proper and necessary parties. In support of this contention, he placed reliance on Sri Krishna Rice Mills, Tadepalligudem by Proprietor Sait Bansilal (died) and Another Vs. Deputy Director (Food) Govt. of India, (office of the Joint Director of Food), Dept. 17/270, Vijayawada 2, and Prabodh Verma v. State of U.P. AIR 1985 SC 187.

7. Whereas Sri M.Panduranga Rao, learned counsel for workmen submitted that the order of the learned single Judge is quite a just one. Actually a dispute was existing between the parties and as the management failed to consider the workmen's demand for pension, the matter was taken through conciliation proceedings before the Dy. Commissioner of labour, Guntur. Since that matter ended up in failure then the matter was taken to the Government with a request to make a reference to the Labour Court, Because the Government dragged on the matter, a writ petition was filed before this Court. At the time of filing of the writ petition, the request was only to direct the Government to refer the dispute for adjudication and not the final adjudication of the dispute itself, as such the management was not a proper and necessary party before the learned single Judge, and the contention that the order of the learned single Judge, in the absence of the management is vitiated, is not correct. Grievance of the management in this writ appeal is quite baseless and imaginary.

8. Now it is proper to advert to the legal position on this aspect.

In Sri Krishna Mills v. Dy. Director (Food) (supra) while dealing with the question of validity of an act of any authority in the absence of any affected person, this court held as follows:

"A court cannot adjudicate on the validity of act of an authority in its absence and any person, who is likely to be affected by any decision given by a Court should be added as a party."

While dealing with similar question of law, the Supreme Court in Prabodh Varma v. State of U.P.(supra) held as follows:

"A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

9. From the facts narrated, it is clear that the workmen were demanding some benefits from the management. Any order obtained by them would vitally affect the management. As such the management was a proper party before the learned single Judge. Any relief obtained by the workmen which will have a bearing on the interests of the management, in the absence of the management will not bind the management. Its absence before the learned single Judge vitiated the proceedings. This position is supported by the above two decisions.

10. In view of the above discussion, our answer to the first question is that the management is a necessary party to the proceedings before the learned single Judge and the order passed in its absence is incorrect and vitiated.

11. The next contention of Sri Kasturi, learned counsel for the appellant is that the order of the learned single Judge is quite incorrect and unsustainable for the reason that the scope of Article 226 is only to direct the Government to consider and not to pass ultimate order, as was done in the instant case. In support of his contention that the High Court cannot straightaway direct the Government to make a reference of the dispute u/s 10 of the Act and the proper thing was to direct the Government to consider or reconsider the matter once again. He placed reliance on Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, ; The Govind Sugar Mills Ltd. and Another Vs. Hind Mazdoor Sabha and Others,

12. On the other hand Sri. M. Panduranga Rao, learned counsel for the workmen submitted that since the Government, during the pendency of the writ Petition, rejected the request of the workmen to refer the matter for adjudication, the said fact was brought to the notice of the Court and the learned single Judge after considering all the relevant aspects found that stand taken by the Government is not correct and allowed the writ petition. When the Court felt that the Government committed a mistake in not making a reference, directing the Government to make a reference u/s 10 of the Act, resulted in rendering substantial justice to the parties. Thus viewed from any angle the order of the learned single judge cannot be said as incorrect. To support his contention he relied on Nirmal Singh Vs. State of Punjab and Others,

13. Regarding the scope and the nature of the order to be passed by the Government when a reference is sought and the powers of the High Court under Article 226 in such situations are considered and explained by the Supreme Court in State of Bombay Vs. K.P. Krishnan and Others, ; Ram Avtar Sharma and Others Vs. State of Haryana and Another, , Govind Sugar Mills v. Hind Mazdoor

Sabha (supra) and Mahavir Jute Mills v. Shibban Lal (supra).

14. In State of Bombay v. K.P. Krishnan (supra) the Supreme Court while dealing with Section 12(5) of the Act and discretionary power of the Government to make reference of the dispute, held as follows: at page 602

"Whether Section 12(5) is construed as making it obligatory on the Government to make a reference when it is satisfied that there is a case for reference or as only conferring a discretion, if in refusing to make a reference Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a Court of law. Though consideration of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations, under the guise of expediency.

XX XX XX

XX XX XX

If the Court is satisfied that the reasons given by the Government for refusing to make a reference u/s 12(5) are extraneous and not germane then the court can issue, and would be justified in issuing, a writ of mandamus even in respect of such an administrative order. Hence in such a case issue of writ of mandamus against the Government to reconsider the question of making or refusing to make a reference u/s 12(5) ignoring the fact of misconduct of the employees and considering only such reasons as mere germane to the question of determining whether a reference should or should not be made is justified."

15. In Ram Avtar v. State of Haryana (supra) while dealing with the powers of High Court to issue a writ of mandamus in cases of requests for reference to the Government, the Supreme Court held as follows: page 192.

"..... Ex facie it would appear that the Government acted on extraneous and irrelevant considerations and the reasons hereinbefore mentioned will mutatis mutandis apply in respect of present order of the Government under challenge. Therefore, for the same reasons, a writ of mandamus must be issued."

In Govind Sugar Mills case (supra) the Supreme Court in a situation relevant to question number two in this case, held as follows: page 373.

"It does not seem to be quite reasonable to take the view that after the refusal of the Government to make a reference is quashed, a writ of mandamus to make a reference must necessarily follow. The matter has still to be left for the exercise of the power by the Government on relevant considerations in the light of the judgment quashing the order of refusal."

Again in Mahavir Jute Mill's case (supra) in similar situations, the Supreme Court took the view that :-

Section 4-K (U.P. I.D. Act) gives a wide discretion to the State Government to act under certain circumstances. If the Government on the basis of the materials before it, comes to the conclusion that no real dispute existed and it was not expedient to make a reference one can hardly find fault with the order of the Government passed u/s 4K of the Industrial Disputes Act. The fact that the Government had taken into consideration the secret report of the Additional Regional Commissioner alongwith other material in refusing to make a reference cannot be valid ground to set aside the order of the Government. Even if the High Court thought that the impugned order of the Government suffered from any legal infirmity all that it could have done was to have asked the Government to reconsider it but it had no jurisdiction to direct the Government how to act and how to exercise its statutory discretion."

16. So far as the decision relied upon by Sri M. Pandu Ranga Rao, namely *Nirmal Sing v. State of Punjab* (supra) has no application to the facts of the case, in view of the peculiar circumstances involved in this case.

17. From the above position it is clear that the scope of mandamus is to declare a particular order of the Government as illegal and unconstitutional and to direct the Government to consider or reconsider the matter afresh but not to straightaway direct the Government to pass an order in a particular manner i.e., directing the Government to refer the dispute, since it is the discretion of the Government to pass orders after applying its mind to relevant factors and subject to prima facie satisfaction as to the existence of dispute or otherwise, We, therefore, find that the order of the learned single Judge, directing the Government to refer the dispute, suffers from arbitrariness and non- application of mind to the existing legal position. We answer the second question accordingly.

18. For the foregoing reasons, the order under challenge deserves to be set aside. Accordingly we do so. It is needless to say that in view of our finding on the above issues and setting aside the order of the learned single Judge, the subsequent order of the Government referring the matter u/s 10 of the Act is inoperative.

19. Before parting with the matter, in order to see that justice is done to both the parties, we direct the Government to reconsider the request of the workmen for referring the dispute u/s 10 of the Act after applying its mind to the material made available and to take appropriate decision as to whether or not to refer the dispute for adjudication u/s 10 of the Act, un-influenced by the earlier decision communicated in letter dated March 24, 1994 in Lr.No.402/Lab.I/A2/94-1 of Women's Development, Child Welfare and Labour (Lab.I) department, or subsequent order referring the matter, or any observations made by the learned single Judge in his order dated April 13, 1994 or in this judgment within three months from the date of receipt of this order. We make it clear that if the management chooses to submit its objections or representation in this regard, the Government to consider the same.

With the above direction, this writ appeal is allowed. No costs.