

(2001) 07 GUJ CK 0053
In the Gujarat High Court

Case No : Special Civil Application No's. 6634 and 6641 of 1999

Jagubha Nathubhas Zala

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2001) 21 GLH 206

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : D.M. Thakkar, for the Appellant; Mukesh R. Shah, for Respondent No. 1, 2 and 3 and Bipin I. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—Heard learned advocate Mr. D.M. Thakkar for the petitioners, Mr. M.R. Shah for respondent no.1 and Mr. Bipin Mehta for respondent no. 2. The petitions were argued at length and finally heard by the consent of the parties and the issue being common, both the petitions are disposed of by this common judgment.

2. In the first S.C.A. No. 6634/99, the order under challenge is issued by the Ministry of Labour, Government of India refusing to refer the industrial dispute as the same had been raised after a lapse of more than 16 years without any justification for the long delay. In the second S.C.A. No. 6641/99, the impugned order issued by the same authority is also one of refusing to refer the dispute as the same was raised after more than 9 years of the cause of action without any justifiable reasons for the long delay. There is no dispute about the fact that the disputes were raised by the petitioners- workmen after inordinate delay and that no plausible reason or justification to explain the delay was furnished on behalf of the petitioners. Therefore, the only common issue which arose for consideration was whether the impugned orders refusing to refer the dispute only on the ground of unjustified delay could be sustained.

3. In the scheme of the Industrial Disputes Act, the provisions contained in Section 10 of the Act for making of the reference provide that where an appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute to the forum mentioned in that section. Section 12 of the Industrial Disputes Act, under the title " Duties of Conciliation Officers" provides in sub-section [5] that where the appropriate Government does not make a reference, it shall record and communicate to the parties concerned its reasons therefor.

4. The learned counsel for the petitioners relied upon a recent judgment of this Court in the case of Hardhesh Kumar Rajaram Vs. K.V.B. Unni and ors. reported in 2000 [3] GLH-196 wherein this Court was inclined to order the appropriate government to make a reference in a case where the order refusing to make a reference was found to have decided the lis between the parties. It is also observed in the said judgment that delay cannot come in the way of raising the dispute and merely because of delay, dispute cannot cease.

5. The learned counsel for the respondent relied upon the recent judgments of the Hon'ble Supreme Court in the Secretary, Indian Tea Association Vs. Ajit Kumar Barat, AIR 2000 SC 507 and, The Nedugadi Bank Ltd. Vs. K.P. Madhavan Kutty- AIR 2000 SC 397, wherein the law on the subject has been crystallized and the Hon'ble Supreme Court has clearly observed that the order of the appropriate government making the reference is an administrative order and not a judicial or quasi-judicial one that no lis is involved and as such the order is made on the subjective satisfaction of the Government.

It is also held in the Nendugadi Bank [supra] that the power to refer is to be exercised reasonably and in rational manner. There appeared to be no rational basis on which the Central Government had exercised the power in that case after a lapse of about 7 years after dismissal of the respondent from service. It is in terms held by the Honb"le Supreme Court that a dispute which is stale could not be the subject matter of reference u/s 10 of the Act.

6. The Full Bench of the Hon'ble Supreme Court has also expressed the view in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, that there may be exceptional cases in which the State Government may on a proper examination of the demand come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. A recent judgment of this Court in Saurashtra Employees Union Vs. Sub Divisional Officer reported in 2000 [2]GLR 1259, was also relied upon by the respondent where the question directly in issue was whether a reference could be refused only on the ground of delay. And, after referring to the Constituting Bench. Judgment of the Supreme Court in the case of State of Bombay Vs. K.P. Krishnan and Others, . it was noted that when government consider whether or not it should exercise its power to make a reference, it would not be wholly irrelevant or extraneous consideration under the guise of expediency and that it may be open to the government to enquire whether the dispute raises a claim which is very stale or which is

opposed to the provisions of the Act. In a case where the claim made is patently frivolous or is clearly belated, the appropriate government may refuse to make a reference. Thus, in short, it was found and held that the authority has power u/s 10 of the Act to refuse to make a reference only on the ground of inordinate delay of 10 years particularly where no justification for delay had either been substantiated or even offered.

7. It was also argued that in case of violation of the provisions of Section 25-H of the Industrial Disputes Act, the factum of delay becomes irrelevant as the cause of action arises, may be after many years, when the employer proposes to employ any persons and the opportunity to the workmen retrenched earlier is denied. The argument contains its own answer as in such a case the cause of action or the dispute arises as and when the provisions of Section 25-H are alleged to have been violated and not from the original date of termination.

8. It was also argued and is but true that a dispute may not cease to exist merely by lapse of few years if it is really pursued. But that presupposes that the dispute was expeditiously raised and pursued or not pursued for sufficient reasons. the raising of the dispute after an inordinate and unexplained delay stands on a different footing.

9. The issues arising in this petition being para materia the same as in the above case before this Court and in respectful agreement with the judgement of this Court, as also following the ratio of the judgment of the Supreme Court in Nedugadi Bank [supra], the challenge to the impugned order has to be negatived. As seen earlier, the demands and disputes are inordinately delayed and no plausible justification has been furnished by the petitioners to explain the delay. Therefore, the impugned orders refusing to make reference of stale demands are found and held to be proper and legal. Accordingly, both the petitions are summarily dismissed with no order as to costs.