
(1962) 08 CAL CK 0027
In the Calcutta High Court
Case No : Matter No. 156 of 1961

Kesoram Cotton Mills Ltd.

APPELLANT

Vs

Second Labour Court and Others

RESPONDENT

Date of Decision : 10-08-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : AIR 1963 Cal 348 : (1962) 5 FLR 308 : (1963) 1 LLJ 169

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—As between the petitioner company, Messrs. Kesoram Cotton Mills Ltd. and their workmen, there arose an industrial dispute over the dismissal of a number of workmen and suspension of some others. The respondent State Government referred the dispute to the Second Labour Court, for adjudication, in exercise of its powers u/s 10 of the Industrial Disputes Act. The issues that were referred to the Labour Court for adjudication are set out below:

"(1) Whether the dismissal of the workmen named in the attached list "A" is justified? To what relief, if any, are they entitled?

(2) Whether suspension for an indefinite period of the workmen named in the attached list "B" is justified? To what relief, if any, are they entitled?"

In list "A" were included the names of 17 workmen (wrongly stated as 16 in the petition). In list "B" were included the names of 13 workmen.

2. The aforesaid reference bears the date, April 26, 1950. Subsequently, however, by an order dated June 9, 1960, the respondent State Government issued a corrigendum to the reference already made. By that corrigendum the 13 workmen whose names had been included in list "B" were included in list "A" as dismissed workmen. The 17 persons whose names had been included in list "A" were included in list "B" as suspended workmen, and names of 11 more workmen were added to the list.

3. The petitioner company feels aggrieved by the corrigendum notification and moved this Court, under Article 226 of the Constitution, praying for a writ of certiorari quashing the corrigendum notification and also for a Writ of Mandamus restraining the respondents from giving effect thereto.

4. Mr. Prafulla Kumar Roy, learned Advocate for the petitioner company, contended with great emphasis that the industrial Disputes Act did not confer any power on the appropriate Government to cancel or supersede a reference, made u/s 10(1) of the Act. He characterised the corrigendum as superseding the original reference in effect, and contended that what the Government did was clearly beyond its competence.

5. The aforesaid contention of Mr. Roy was sought to be repelled by Mr. S. K. Acharya, learned Advocate for the workmen, on the ground that the State Government had not really superseded or cancelled the reference. All that it did was to correct two errors which had inadvertently crept into the original order of reference. The errors were, firstly, that the names of the dismissed and suspended workmen were inadvertently described [n the wrong lists and, secondly, the names of 11 suspended workmen, were inadvertently omitted from the appropriate list

6. Mr. K. C. mukherjee learned Advocate for the State Government, frankly conceded that the State Government fell into the errors as described by Mr. Acharya, and in order to correct the error the corrigendum notification had to be published. He also produced the records, which were shown both to Mr. Roy and Mr. Acharya, which supported the aforesaid concession made by him.

7. It is unfortunate that the State Government tell victim to such an error. But even though that is so, even then all errors are not rectifiable and that is particularly so if a special statute makes express provision as to when omission as to names of parties may be rectified, corrected or made up. This point is now covered by a judgment of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, . At p. 1088 of the report: (At p. 1021 of AIR) Gajendragadkar J. observed as follows:

"But once an order in writing is made by the appropriate government referring an industrial dispute to the tribunal for adjudication u/s 10(1), proceedings before the tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the tribunal becomes enforceable u/s 17-A. This is the effect of Section 20(3) of the Act. This provision shows that after the dispute is referred to the tribunal, during the continuance of the reference proceedings, it is the tribunal which is seized of the dispute and which can exercise jurisdiction in respect of it. The appropriate government can act in respect of a reference pending adjudication before a tribunal only u/s 10(5) of the Act, which authorises it to add other parties to the pending dispute subject to the conditions mentioned in the said provision. It would therefore be reasonable to hold that except for cases falling u/s 10(5) the appropriate

government stands outside the reference proceedings, which are under the control and jurisdiction of the tribunal itself."

8. Section 10(5) of the Industrial Disputes Act to which reference is made in the above quoted passage reads as follows:

"Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be Interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments."

9. The 11 workmen, whose names were subsequently added in list "B" of the corrigendum notification do not constitute an establishment or group or class of establishment of the similar nature as the petitioner company. Therefore, their names could not be added to the reference by the State Government in exercise of its powers u/s 10(5) of the Industrial Disputes Act.

10. Mr. Roy must, therefore, be upheld in his contention that the State Government lacked the power to add new parties to the reference even though that did not amount to supersession or cancellation of the reference. Although I uphold Mr. Roy in this contention of his, I have to observe that the objection is one of form and not of substance. It is always open to the Government to make an independent reference over the suspension of the 11 workmen, whose names were inadvertently left out of the original order of reference. The State Government may lack in the power to amend the original reference by adding the names of new parties, but nothing prevents it from making an additional reference to the same tribunal so that both the references may be considered together. This is the view which was expressed by Venkatarama Aiyar (one of the learned judges constituting the Bench which decided the case of *The State of Bihar Vs. D.N. Ganguly and Others*, , in the case of *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*, .

11. I, however, make it clear that if there is an apparent error in the order of reference (and no question arises either of supersession, cancellation or modification of the reference or of any addition thereto), such an error may be corrected by way of corrigendum. But the State Government has no power to add parties to the reference excepting under the provisions of Section 10(5) of the Industrial Disputes Act. The addition of names as made by them in List (B) of the corrigendum notification is not covered by Section 10(5) of the Industrial Disputes Act and must, therefore, stand quashed.

12. The result of the quashing will be that the reference as originally made shall

stand without the addition of names sought to be introduced by the corrigendum notification but otherwise corrected by the corrigendum. It will, however, now be open to the State Government to make an independent or additional reference to the same Tribunal in respect of the eleven workmen, so that the said Tribunal may hear and determine the dispute over the suspension of the workmen of the petitioners either by consolidating the two references or by making them analogous or by hearing the two references one after another. The State Government is, however, held to have been at liberty to correct, by a corrigendum notification, the apparent error which had crept in describing the workmen under the appropriate list. I believe the State Government will take appropriate steps in this direction as clearly as possible.

13. Mr. Roy succeeds in technicality end, therefore, although I make this Rule absolute subject to the observations herein contained. I make no order as to costs in favour of the petitioners.