

(2002) 11 BOM CK 0071
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 2386 of 2002

Kishor Mahadeo Kamble

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2003) 1 LLJ 813

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : Jaiprakash Sawant, for the Appellant; D.A. Dubey and Suresh Kumar for Respondent No. 1 and S.I. Shah, for the Respondent

Final Decision : Allowed

Judgement

1. Rule. Returnable forthwith.
2. Mr. Dubey, advocate waives service for respondent No. 1 and Ms. S.I. Shah, advocate waives service for respondent No. 2.
3. Rule is heard finally at this stage.
4. The petitioner is aggrieved by the communication dated April 2, 2002 received from respondent No. 1 whereby the dispute raised by the petitioner has been refused to be referred for adjudication by the appropriate Government.
5. According to the petitioner, he was employed as peon by the Chief Manager, MTNL (respondent No. 2) in the office at Vikhroli, Mumbai in the month of December 1994 and he was in continuous service till May 17, 1999. Vide his letter dated January 31, 2001 the petitioner raised the dispute before conciliation officer against the second respondent demanding reinstatement with full back wages and continuity of service. The conciliation proceedings ended in failure and the conciliation officer submitted failure report dated January 24, 2002 to the first respondent. As noted above, the first respondent refused to refer the

dispute for adjudication.

6. The reason given for refusal to refer the dispute for adjudication is that the workman failed to produce any authenticated documents/records to establish that he was working with the management from February 21, 1994.

7. It appears that the petitioner did produce copy of his identity card issued by respondent No. 2 and some payment vouchers, copies of muster roll etc. In the back drop of documents produced and the settled legal position that the appropriate Government cannot go into the merits of the dispute raised by the workmen while forming the opinion whether the dispute raised needs to be referred for adjudication, the impugned communication refusing to refer the dispute for adjudication cannot be sustained. In *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, , the Apex Court held thus at p.p. 522 & 523 of LLJ:

".....Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute exists or is apprehended and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi judicial Tribunal by an administrative authority namely the Appropriate Government. In our opinion, the reasons given by the State Government to decline reference are beyond the powers of the Government under the relevant sections of the Industrial Disputes Act. What the State Government has done in this case is not a prima facie examination of the merits of the question involved. To say that granting of clearness allowance equal to that of the employees of the Central Government would cast additional financial burden on the Government is to make an unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterised as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand.

6. Same is the case with the conclusion arrived at by the High Court accepting the stand of the State Government that the employees were not entitled to the Chambal allowance as the same was included in the consolidated pay. This question, in fact, relates to the conditions of service of the employees. What exactly, are the conditions of service of the employees and in what manner their conditions of service could be improved are matters which are the special preserve of the appropriate Tribunals to be decided in adjudicatory processes and are not ones to be decided by the Government on a prima facie examination of

the demand. This demand again can never be said to be either perverse or frivolous.

7. 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. Government should be very slow to attempt an examination of the demand with a view to decline reference and Court will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory."

8. The aforesaid legal position was reiterated by the Apex Court in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, . The Apex Court in paragraph 13 of the report held thus at p. 560 of LLJ:

"13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis which would certainly be in excess of the power conferred on it by Section 10 of Act. See *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, , *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, , *Shambu Nath Goyal Vs. Bank of Baroda*, .

9. In our considered view the impugned communication dated April 2, 2002 cannot be sustained and the first respondent erred in not referring the dispute for adjudication to the concerned Tribunal.

10. We accordingly, allow the writ petition, set aside the communication dated April 2, 2002 and direct the first respondent to refer the following dispute for adjudication to the competent Tribunal within eight weeks from today:

"Whether the action of the management of Mahanagar Telephone Nigam Ltd., Mumbai in terminating the services of Shri Kishor Mahadeo Kamble, Office Peon w.e.f May 17, 1999 is legal and justified? If not, to what relief the workman is entitled?"

11. No costs

12. The parties may be provided ordinary copy of this order duly authenticated by Court Associate on payment of usual copying charges.