
(1968) 09 MP CK 0015

In the Madhya Pradesh High Court

Case No : Mice. Petition No. 498 of 1966

K.P. Singh and another

APPELLANT

Vs

S.K. Gokhale and another

RESPONDENT

Date of Decision : 02-09-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A

Citation : (1969) JLJ 449 : (1968) MPLJ 890

Hon'ble Judges : P.K. Tare, J;K.L. Pandey, J

Bench : Division Bench

Advocate : K.K. Adhikari, for the Appellant; P.S. Nair, for the Respondent

Final Decision : Allowed

Judgement

P.K. Taek, J.

In this petition under Articles 226 and 227 of the Constitution of India, the Petitioner No. 1, an employee of the second Respondent National Coal Development Corporation Ltd., Jamuna Colliery P. O. Kotma, challenges the award of the first Respondent (Annexure No. 13) on the ground that the Arbitrator had no jurisdiction to proceed with the arbitration proceedings in the absence of the procedure to be followed as prescribed by Section 10-A of the Industrial Disputes Act, 1947 (Central).

The second Respondent employer and the second Petitioner M.P. Koyla Majdoor Panchayat, a registered Union, tried for conciliation of their dispute through the machinery of conciliation; but the conciliation proceedings did not fructify. However, by an agreement dated 14-1-1966, they entered into an agreement (Petitioner's Annexure No. 7) referring the Industrial dispute for arbitration by the sole Arbitrator, Shri S.K. Gokhale, Regional Labour Commissioner (Central), Jabalpur for adjudication of the following points of dispute:

(1)-Whether the transfer of Shri K.P. Singh, Shot Pirer (Gasay Mine) and Shri G. Joshi, Assistant Store Keeper was effected by the Management from Jamuna

Colliery to Talcher (Orissa field and Surakachar - Korba region) respectively with a view to weaken the M.P. Koyla Mazdoor Panchayat at Jamuna Colliery.

(2)-Whether Shri K. P Singh's refusal to comply with the transfer orders was justified and whether Shri K, P. Singh is entitled to any relief for the period that he has remained unemployed as a result of his refusal to comply with the transfer orders.

(3)-What other consequential arrangements should be made on the basis of the determination of the first two issues. The parties agreed to be bound by the decision of the Arbitrator.

At this stage it may be relevant to reproduce Section 10-A of the Industrial Disputes Act, 1947, which is as follows:

Sub-section (1) - Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time, before the dispute has been referred u/s 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

Sub-section (1-A) - Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

Sub-section (2) - An arbitration agreement referred to in Sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

Sub-section (3) - A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within (one month) from the date of the receipt of such copy, publish the same in the Official Gazette.

Sub-section (3-A)-Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in Sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators

Sub-section (4)- The arbitrator or arbitrators shall investigate the dispute and

submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be

Sub-section (4-A)-Where an industrial dispute has been referred to arbitration and a notification has been issued under Sub-section (3-A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

Sub-section (5)-Nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitrations under this section.

The Learned Counsel for the Petitioners urged that the arbitration agreement having been entered into under Sub-section (1) of Section 10-A of the Act, and the agreement having been executed in form C, as per Sub-section (2) of the said section, it was necessary to follow the procedure prescribed by the other Sub-sections of the said section. It was pointed out that the procedure prescribed by Sub-section (3) was not followed. It is true that the provision in Sub-section (3-A) is optional and dependent on the satisfaction of the appropriate Government, but the award has to be communicated through the appropriate Government as per Sub-section (4) and it is only after a Notification under Sub-section (4-A) that a strike or lock-out can be declared illegal. Sub-section (5) excludes the operation of the Arbitration Act, 1910.

The Learned Counsel for the Petitioner urged that on account of the failure to follow the procedure prescribed by Section 10-A of the Act, other Unions which may be interested in the general questions referred to arbitration, were prevented from having their say before the Arbitrator. It was pointed out that the entire arbitration proceedings are vitiated as the Arbitrator purported to follow a procedure which may be in consonance with a private arbitration and which was definitely opposed to the specific provision of Section 10-A of the Act, therefore, it was urged that the award will be no award in the eye of the law and the same deserves to be quashed. Further, it was pointed out that the provisions of the Arbitration Act, 1940 being inapplicable, the Petitioners would have no remedy under the law except to approach this Court by seeking writs of certiorari and Mandamus.

In this connection, we might observe that a Division Bench of the Bombay High Court in *Air Corporations Employees' Union and Another Vs. D.C. Vyas and Others*, , laid down that the arbitration contemplated by Section 10-A of the Industrial Disputes Act, 1947 would have all the essential attributes of a statutory arbitration u/s 10 of the Act; and that the power of superintendence of the High Court under Article 227 would always be there as the Arbitrator would be functioning as a quasi-judicial body and his orders could be corrected by the High Court in exercise of prerogative powers under Articles 226 and 227 of the Constitution of India. The learned Judges expressed the opinion that in substance there would be no difference between the statutory arbitration as contemplated

by Section 10 and a voluntary arbitration as contemplated by Section 10-A of the Act.

To the same effect are the observations of a Division Bench of the Patna High Court, presided over by Ramaswami C.J. (as he then was) and Untwalia J. in *Rohtas Industries Staff Union and Others Vs. State of Bihar and Others*, . However, in that case the Division Bench laid down that a claim for compensation payable by workmen to the employer for loss caused would not be an industrial dispute within the meaning of Section 2(k) of the Act. However, in the present case by virtue of the definition of an industrial dispute, the Union having taken up an individual dispute would make it an industrial dispute and, therefore, the Union and the employer were competent to enter into an arbitration agreement in respect of the industrial dispute.

Now, the matter stands concluded by the pronouncement of their Lordships of the Supreme Court in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, . wherein their Lordships laid down that the decisions of the arbitrators to whom industrial disputes are voluntarily referred u/s 10-A of the Industrial Disputes Act, 1947, would, no doubt, be quasi-judicial decisions and would amount to a determination or order for the purpose of Article 136(1) of the Constitution of India. However, their Lordships laid down that an Arbitrator acting u/s 10-A would not be a Tribunal under Article 136, even though some of "the trappings of a Court" would be present in the case. It was because of that their Lordships thought that no special leave under Article 136(1) of the Constitution of India could be given to file an appeal against the award of the Arbitrator acting u/s 10-A of the Industrial Disputes Act. However, as their Lordships laid down that he would be acting as quasi-judicial body, it necessarily implies that the decisions of the Arbitrator would be subject to writs of certiorari in appropriate cases. For this reason, we are of opinion that if this Court finds that the requisite procedure, as prescribed by the Act, was not followed so as to confer the necessary jurisdiction on the Arbitrator to proceed with the adjudication of the dispute referred to him, this Court can in exercise of prerogative powers issue the necessary writs.

The Learned Counsel for the second Respondent, however, urged that this was not a reference of an industrial dispute to an Arbitrator u/s 10-A of the Industrial Disputes Act, 1947. It was urged that the dispute was referred to the Arbitrator under the Code of Discipline in Industry, which was framed as per Tripartite Conclusions 1942-1962, a publication by the Government of India, Ministry of Labour and Employment, vide Appendix VIII at page 220 of the said book. Therefore, it was urged that this being a private arbitration and not one u/s 10-A of the Act, it was not necessary to follow the procedure prescribed by different Sub-sections of the said section. We are unable to appreciate this line of argument. The Industrial Disputes Act specifically contemplates settlement of disputes through conciliation, arbitration and adjudication through Tribunals and

not to leave the contending parties to settle the same by strikes and lock-outs. It would be futile to contend that an arbitration agreement between an employer and an employee regarding an industrial dispute would be a private agreement outside the scope of Section 10-A of the Act. We are unable to accede to that contention for the simple reason that the Industrial Disputes Act does not contemplate any private arbitrations in respect of questions of public importance involving industrial disputes. If that had been the intent of the Legislature, Sub-section (5) of Section 10-A of the Act would not have excluded the operation of the Arbitration Act, 1940. Thus, we feel that the present arbitration agreement could not be a private arbitration agreement, but the same necessarily was under Sub-section (1) of Section 10-A of the Act, specially when form C prescribed for such an agreement was used by the parties.

We may further observe that accepting this line of argument would amount to rendering the provisions of the special enactment nugatory, thereby "allowing the parties to contract out of the statutory provisions and such private agreements in respect of industrial disputes based on contracting out of the statutory provisions would, in our opinion, be void u/s 23 of the Indian Contract Act. For these reasons we feel that the arbitration agreement in question can only be interpreted to have been entered into under Sub-section (1) of Section 10-A of the Act and not otherwise. Therefore, necessarily the provisions of the Arbitration Act, 1940 would be wholly inapplicable.

The next question is as to whether the award of the Arbitrator would be vitiated due to the failure to follow the procedure prescribed by the different Sub-sections of Section 10-A of the Act. In this connection we may observe that Section 11 of the Act prescribes the procedure to be followed by a Conciliation Officer, the Board, the Court or the Tribunal; but leaves the Arbitrator to follow his own procedure. That is certainly in consonance with the principles of arbitration and the only responsibility on the Arbitrator is to act in consonance with the principles of natural justice and he can evolve his own procedure in accordance with those principles. But, in order that he may be able to proceed with the adjudication of the points of dispute for arbitration, certain procedure has been prescribed by Section 10-A, which, as is clear from the wording, is mandatory. The wording of Sub-section (1) is enabling and confers the powers on parties to enter into an arbitration agreement. But, once such an agreement is entered into, it is incumbent on the parties to make the agreement in the prescribed form and to forward a copy of the arbitration agreement to the appropriate Government, on receipt of which the appropriate Government is required to publish the same in the official Gazette. It means that all parties interested in the dispute should have notice of reference of the dispute to arbitration and such of them might represent their view point before the Arbitrator as may choose. The procedure to be followed under Sub-section (3-A) is directory and the Government is required to adopt it, if it wants to make the award binding on the parties or persons who have not joined the reference to arbitration. But, Sub-section (4) positively lays down that the award has to be

submitted to the appropriate Government. The mandatory provisions as prescribed by Sub-section (3) and Sub-section (4) of Section 10-A of the Act, not having been followed, the machinery for enforcement of the award would not be available to the parties.

In the present case the Learned Counsel for the second Respondent urged that it was not necessary to enforce the award. It may be so in this particular case. But in many other cases enforcement of the award might be found necessary and if the procedure prescribed by Sub-section (3) and Sub-section (4) is not followed, the award might not be enforceable. For this reason that we feel that an award would be invalid on the ground that the mandatory procedure prescribed by Sub-section (3) and Sub-section (4) of Section 10-A of the Act is not followed. At present, we do not wish to pronounce on the merits or otherwise of the award, but, in our opinion, the award is rendered invalid for the reasons mentioned above.

As a result of the discussion aforesaid, we quash the award of the Arbitrator (Annexure No. 13) and direct that the arbitrator to decide the industrial dispute afresh after the procedure prescribed by the different Sub-sections of Section 10-A of the Act is followed.

Accordingly, writs of certiorari and mandamus shall issue to the Respondents. The petition is accordingly allowed with costs. Counsel's fee in this Court shall be Rs. 100, if certified. The security deposited by the Petitioners be refunded to them.