
(1985) 10 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No's. 2143/84

Krishna Babu Ghadigaokar

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 25-10-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 11A, 12, 12(2)

Citation : (1986) 52 FLR 55 : (1986) 1 LLJ 329 : (1986) MhLj 55

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Judgement

1. A simple but substantial question of law that arises in these Writ Petitions under Art. 226 of the Constitution of India, is under what circumstances the appropriate Government may refuse to make a reference under S. 12(2) of the Industrial Disputes act, 1947 (hereinafter referred to as "the Act").

2. The facts common to all the Writ Petitions, as relevant for the purpose of disposal of these writ petitions, are not in dispute. The petitioners, in all the four writ petitions, were alleged to have committed certain misconduct. They were suspended, charge-sheeted and then proceeded against in what is popularly known as domestic enquiry and thereafter dismissed by their employer M/s. Asian Paints (India) Ltd. (hereinafter referred to as "Respondent No. 3"). On receipt of dismissal order the Petitioners raised industrial disputes and demanded that they be reinstated with back-wages and continuity of service. The Conciliation Officer made efforts to bring about settlement but failed and consequently submitted, what is called, the failure reports under Sub-s. (4) of S. 12 of the Act to the Deputy Commissioner of Labour (Conciliation). The said Deputy Commissioner of Labour (Respondent No. 2) who exercised the powers conferred on her by the Government of Maharashtra (Respondent No. 1) vide her orders dated 21st August, 1984 in respect of writ petitions Nos. 2143 of 1984, 2144 of 1984, and 2145 of 1984 and vide order dated 13/14 December, 1984 in respect of writ petition No. 137 of 1985 refused to make references under Sub-s.

(2) of S. 12 of the Act. The said orders are impugned by the petitioners in these writ petitions.

3. Mr. Dharap, learned Counsel appearing on behalf of the Petitioners, urged that the reasons given by Respondent No. 2 in not making the references are inadequate and at any rate Government cannot take upon itself the exercise of adjudicating upon the disputes which can only be done either by the Labour Court or the Industrial Tribunal as the case may be. In the further submission of Mr. Dharap, there was total non-application of mind on the part of Respondent No. 2 in refusing to make references which amounts to arbitrary action on her part. Mr. Dharap also submitted that a harmonious reading of S. 10 with S. 11A of the Act clearly shows that the Petitioner-workmen have a right to justify before the Labour Court or the Industrial Tribunal as to how the orders of dismissal passed by the Respondent No. 3 were incorrect. Therefore, in refusing to make references, Respondent No. 2 has deprived the Petitioner-workmen of this right. Mr. Dharap then submitted that if references were made, the Labour Court or Industrial Tribunal could have gone into the question of adequacy of punishment vis-a-vis the misconduct alleged.

4. Mr. Gokhale, learned Counsel appearing on behalf of Respondent Nos. 1 and 2, urged that the powers of the Government under S. 10 of the Act are purely discretionary and the Government may always refuse to a reference for reasons to be recorded in writing after going through the entire record. Mr. Gokhale also submitted that in the instant cases, full opportunity was given to the workmen to participate in the domestic enquiries held against them and it is no use reviewing the entire evidence as also the quantum of punishment. Mr. Khambatta, learned Counsel appearing for Respondent No. 3, supplemented the arguments of Mr. Gokhale and submitted that the facts of the misconduct in these cases were outrageous and Respondent No. 2 who went through the entire record of the domestic enquiries was fully justified, prima facie, in coming to a conclusion that these were not fit cases for making references. Mr. Khambatta also submitted that the discretion used by the Government in these cases was just and proper in as much as facts disclosed that a number of workmen hatched a conspiracy and indulged in violent acts very high-handedly and assaulted the Company's Officers in the presence of police officers and these are not the cases where even a Court would reinstate or grant compensation to workmen because that would not be in the interest of industrial peace. Mr. Khambatta further urged that the workmen here are not left without any remedy just because the references are refused as they can move the Industrial Court and for the Labour Court as the case may be, if at all they feel that unfair labour practices were committed against them by Respondent No. 3. Mr. Kambatta lastly submitted that, in any case, this Court cannot order the Government to make a reference and/or references under Art. 226 of the Constitution but can only direct the Government to re-consider the matters.

5. Now, after a Conciliation Officer submits a failure report under S. 12(4) of the

Act, the appropriate Government has to consider whether a reference should or should not be made to the proper authority. Section 12(5) of the Act reads as under :

"If, on consideration of the report referred to in Sub-s. (4), the appropriate Government is satisfied that there is a case for reference to a Board (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

It may be noted here that if the Government decides to make a reference it has to be done under S. 10(1) of the Act. From a bare reading of S. 12(5) it is clear that the powers vested in the Government to make a reference are discretionary. But when the Government chooses not to make a reference, it has to record reasons for not doing so and communicate the same to the parties concerned. This is a mandatory duty of the Government.

6. In the instant cases, Respondent No. 2 passed the identical orders in all the four matters. For convenience sake, we may quote here the order impugned in Writ Petition No. 2143 of 1984. It reads as under :

"In exercise of the powers conferred on me by Government Notification, Industries, Energy and Labour Department No. IDA. 1379/3496 (i) LAB-9 dated 20th April 1979 issued in supersession of Government Notification, Industries and Labour Department No. IDA. 1369/117365/Lab-II dated 9th April, 1969, I have to state that I have considered the report dated 3rd July 1984 submitted to me by the Conciliation Officer, under sub-s. (4) of S. 12 of the Industrial Disputes Act, 1947 (XIV of 1947) in respect of the above dispute and I am satisfied that there is no case for reference thereof under sub-s. (5) of S. 12 for the reasons that prima facie the reference is not justified because having regard to the merits of the enquiry, the gravity of misconduct committed and the nature of the punishment awarded, such a reference would not be conducive to industrial peace in the company."

This order shows the Respondent No. 2 did not give adequate and convincing reasons for refusing to make a reference. The functions which Respondent No. 2 was exercising, having been invested with the powers of the appropriate Government, had to be exercised with utmost care and caution and reasonably. While exercising such powers the Government should be slow in declining to make a reference because in doing so, the Government attempts to usurp the powers of the Labour Court or Industrial Tribunal in going into the merits of the matter. It is only when the Government comes to the conclusion that the claims made by the workmen were perverse or frivolous or bogus or were inordinately delayed that the Government may exercise its discretion and refuse to make a reference. In the cases before us, Respondent No. 2 had done nothing except perusing failure reports submitted by the Conciliation Officer under S. 12(4) of the Act. A perusal of the said failure reports shows that the Conciliation Officer

had only stated the contentions raised by the workmen and Respondent No. 3. Respondent No. 2 in her affidavit stated that she went through the relevant record and regard being had to the merits of the enquiry and gravity of the misconduct and the nature of punishment she was of the opinion, prima facie, that reference was not justified. However, there is nothing in the impugned orders to demonstrate whether she had fully considered the matters and what exactly weighed with her for coming to the conclusion as she did. The orders passed by her are quite cryptic and appear to have been passed mechanically without application of mind. She should have passed little more communicative orders so that one could know what persuaded the Government to decline references. In such cases Government is expected to exercise its discretion properly and assign acceptable reasons for its decision. Hence I am of the opinion that the said orders are not sustainable in law. It may be stated that in view of the introduction of S. 11A, in the Industrial Disputes Act, 1947 which gives powers to the Labour Courts and Industrial Tribunals to give appropriate relief in the event of discharge or dismissal of the workmen it is all the more incumbent upon the Government to make references in cases like the present ones and not take away the powers of the judicial authorities by refusing to make references. In case of K.P. Kshatriya Vs. Khandelwal Udyog Limited and others, the Division Bench of this Court held :

"The power conferred under S. 10 to make a reference or not, is indeed discretionary and the Government is not bound to make a reference of any dispute because a party or a union or the employer demands such a reference. Even so, the Government is under an obligation to exercise the discretion, reasonably and by reference only to relevant considerations. One of the relevant considerations, while making or refusing to make a reference, after the introduction of S. 11A, must necessarily be that the employee is entitled to get the evidence as to the proof of his misconduct reviewed in such a reference as also the quantum of punishment, even if the misconduct is held to have been proved. In other words, the circumstances that the disciplinary authority or the appellate authority over the same has applied its mind to the evidence on record and had bon fide come to some conclusion as to the proof of misconduct and the quantum of punishment by itself is not sufficient to refuse to make reference.

In the altered legal situation, the Government has to consider prima facie whether there is anything in the evidence which may goad or persuade the Labour Court or the Industrial Tribunal to change its opinion as to the conclusion of misconduct or the quantum or punishment therefor. The Government may refuse to make a reference if in their prima facie opinion the right of getting evidence reviewed already recorded and the right of getting reviewed the quantum of punishment awarded, is bound to be of no practical use in a particular case."

7. As regards Mr. Khambatta's submission that this Court cannot order the Government to make a reference and can only direct the Government to

reconsider the matter, all that I have to say is that there is no substance in the submission of Mr. Khambatta in view of the law laid down by the Supreme Court in cases of Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another, Nirmal Singh Vs. State of Punjab and Others, and M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, . We may point out here that this Court had also in case of Rohinton P. Daruwalla v. Deputy Commissioner of Labour (Conciliation and other Bombay (1985) I C.L.R. 127 , directed the State Government to make a reference to the appropriate authority or forum under S. 12(5) of the Act. Similarly, a Division Bench of the Gujarat High Court in case of Suresh Shantaram Joshi Vs. Regional Manager Bank of Maharashtra Baroda and Another, had directed the Central Government to make such a reference.

8. In this view of the matters, all the Petitions succeed. The Orders made by Respondent No. 2 dated August 21, 1984 in Writ Petition No. 2143 of 1984, Writ Petition No. 2144 of 1984 and Writ Petition No. 2145 of 1984 and on December 13/14, 1984 in Writ Petition No. 137 of 1984 refusing to make references are quashed and set aside. I direct that the State Government shall refer the disputes raised by the four Petitioners to appropriate Labour Court or Industrial Tribunal under S. 12(5) of the Act for proper adjudication. I further direct that these references shall be made within a period of 15 days of the receipts of writs.

9. Rule in each of the Petitions accordingly made absolute with no order as to costs.