

(1985) 03 DEL CK 0052
In the Delhi High Court
Case No : Civil Writ No. 207 of 1972

Krishna Bus Service Pvt. Ltd.

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 20-03-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1985) 51 FLR 219 : (1994) 3 LLJ 42

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : S.N. Bhandari, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Sunanda Bhandare, J.—In exercise of the powers conferred u/s 10(l)(c) and 12(5) of the Industrial Disputes Act read with the Government of India, Ministry of Home Affairs' Notification No. 2/2/61-Judl. 11 dated 24th March, 1961 Delhi Administration by an order dated 4th May, 1967 referred an industrial dispute of a workman Shri Ujagar Singh (respondent No. 3 herein) for adjudication to Shri V.P. Aggarwal, the then Presiding Officer of the Labour Court.

2. The petitioner is a private limited company and respondent No. 3-Ujagar Singh was employed to work as Conductor with the petitioner-company. It is alleged in the petition that respondent No. 3 committed certain acts of misconduct and, Therefore, an inquiry was ordered to be instituted against him and on receipt of the Inquiry Report the petitioner-company decided to dismiss the petitioner from service. Since the conciliation failed, the Conciliation Officer submitted his report u/s 12(4) of the Industrial Disputes Act to the Delhi Administration on the basis of which the above reference was made. The term of Reference reads thus:-

"Whether the dismissal of Shri Ujagar Singh, Conductor is wrongful and unjustified and if so, to what relief, if any, is he entitled?"

Notices were served on parties by the Presiding Officer of the Labour Court. The

workman filed his statement of claim and the Management filed its written statement. The Labour Court framed issues and fixed : the case for evidence of the parties. Thereafter, the petitioner-company herein filed its amended written statement and supplementary written statement and supplementary written statement and the Labour Court, Therefore, framed two additional issues. The Labour Court decided in favor of the workman on issue No. 1/A and held that the Reference cannot be treated as invalid for want of demand by the workman as demand was actually made by the workman on the Management. The objection of the petitioner-company regarding the competence of the Lt. Governor to exercise the power of appropriate Government by virtue of notification made by the Government of India No. 2/2/61-Judl.II, dated 24th March, 1961 was also rejected in view of the judgment of this Court in C.W. No. 254 of 1970 Fedders Lloyd Corporation Pvt. Ltd. Vs. Lt. Governor, Delhi and Others, : decided on 27.7.1970 where it was held that the Lt. Governor, Delhi is fully competent by virtue of delegation made by the President to exercise the powers of appropriate Government.

3. The main argument of the petitioner before the Labour Court was that the order of Reference passed by the Delhi Administration was illegal and invalid since there is no order in the hand or under the signatures of the Lt. Governor who is purported to have been delegated with the powers of the State Government by the President of India under Article 239 of the Constitution of India qua the Industrial Disputes Act, 1947. The Labour Court after having discussed the arguments advanced by the learned counsel for the Management came to the conclusion that from the record it is evident that the Lt. Governor was satisfied that the dispute should be referred to the Labour Court. The argument made on behalf of the Management that the order of Reference which was signed by the Under Secretary is not the order of Lt. Governor of Delhi and, Therefore, it was invalid, was also rejected. The Labour Court held that the order making reference is an administrative order and not a judicial or quasi judicial order and since it was written under the instructions and on behalf of the Lt. Governor by his Secretary, it satisfied the requirement of being an order in writing by the appropriate Government making the Reference.

4. Before me the only point urged by the learned counsel for the petitioner was that the order of Reference should have been signed by the Lt. Governor, Delhi himself, Since the order was not signed by the Lt. Governor, it was invalid. It was contended that there was no application of mind by the Lt. Governor, and the order not being in conformity with the statute is ultra virus of the powers. It was contended that there is no order in the hand or under the signatures of the Lt. Governor. It was contended that the Under Secretary (Industries & Labour), Delhi Administration had signed the cyclostyled order on behalf of the Lt. Governor, though there was no specific order or direction to this effect. Learned counsel referred to the evidence of Shri S.S. Sanzagiri, Under Secretary (Labour), Delhi Administration justifying this reference. A noting on the file "L.G. has seen and approved" is written by Shri Saklani, the then Secretary to the Lt.

Governor of Delhi. It is, Therefore, contended that the evidence of this witness showed that there was no application of mind by the Lt. Governor while making the reference. It was further contended that the evidence establishes that no order in writing was passed by the Lt. Governor making this reference or forming opinion about the existence of an industrial dispute or for its reference to- the Labour Court. The learned counsel relied on the judgment of the Allahabad High Court in Dr. (Mrs.) Gyanwati Trivedi Vs. Dr. (Miss) Sarojini Varshney and Others, In this case the Allahabad High Court had come to the conclusion that the office of the President and the office of the Visitor are polarized in one person but as Visitor of the University he is under a statutory duty to act judicially and, Therefore, bound to state reasons in support of the order.

5. The Supreme Court in Shambu Nath Goyal Vs. Bank of Baroda, has categorically held that in making the order of reference the Government is doing an administrative act, and the fact that it has to form an opinion as to factual evidence of an industrial dispute as a preliminary step to the discharge of its functions does not make it any the less administrative in character. The opinion of the Government u/s 10(1) in referring the dispute is subjective and the Court cannot scrutinise the reference closely to see if there was any material for the Government for coming to its conclusion as if it was judicial or a quasi - judicial determination. If there is any defect in the order of reference, the defect can be remedied by showing other evidence in the course of the proceedings that in fact the order was made after such opinion had been formed, and that there was thus a valid exercise of power conferred by law. Since in the present case, the order contained valid recital regarding the condition being satisfied the burden to show that the recital is incorrect and the requirement of formation of an opinion was in fact not complied with would be on the Management. The record in this case shows that though there is no order of reference in the hand or under the signatures of the Lt. Governor making this reference, a note regarding this dispute along with the draft order and the report of the Conciliation Officer was put up before the Lt. Governor and his Secretary after obtaining the approval of the Lt. Governor on the file. Once the approval of the Lt. Governor was taken it was not necessary that the order had to be signed in the hand of the Lt. Governor himself. The authority cited by the learned counsel for the petitioner does not also help him. In that case, the Allahabad High Court held that the Visitor of the University was performing a quasi judicial function and, Therefore, the order had to be signed by the President himself. In the present case the order to be made by the Lt. Governor is an administrative order and it is not required to be a speaking order. The contemporaneous record relied upon by the Labour Court establishes that the order of reference was made after full application of mind. The Labour Court after appreciating all the evidence has come to this conclusion and while exercising jurisdiction under Article 226 of the Constitution of India this Court would not interfere with this finding of fact. The petition has to be dismissed.

6. While issuing rule, this Court had not granted stay of further proceedings

pending before the Labour Court. The Reference in this case was made on 4th May, 1967 and the award was made by the Labour Court on 30th October, 1971. For 15 years the petitioner has been able to keep this preliminary issue alive. At the time of the hearing of the case no one appeared on behalf of the respondents. It is, Therefore, directed that if a final award is made the same should be implemented forthwith. Respondent No. 3 may not have appeared because of the heavy costs that he may have had to incur in litigation. The petitioner will pay Rs. 1,000/- to respondent No. 3 towards costs.