
(2010) 09 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33896 of 2008

LML Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 18, 3
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6B

Citation : (2011) 128 FLR 589

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bala Krishna Narayana, J.—Counter and Rejoinder affidavits have been exchanged.

With the consent of learned Counsel for the parties this writ petition is being finally disposed of at the admission stage.

Heard Sri Shashi Nandan assisted by Sri Vijay Sinha learned Counsel for the Petitioner, learned Standing Counsel for Respondent Nos. 1 and 2 and Sri K.P. Agarwal learned Senior Advocate assisted by Ms. Bushera Mariam for the Respondent No. 3.

The challenge in the instant writ petition by the Petitioner M/s Lohia Machines Limited is to the Order dated 21.5.2008 (Annexure 9 to the writ petition) by which the Respondent No. 1 has made a reference u/s 4-K of the U.P. Industrial Disputes Act (hereinafter referred to as "the Act") and referred it to adjudication as well as the order dated 28.5.2008 (Annexure 10 to the writ petition) passed by Respondent No. 2 by which he required the parties to submit their written statements and the evidences in support of their respective contentions.

2. The Petitioner which is a public limited company duly incorporated under the provisions of "Companies Act 1956" was engaged in the business of manufacture

of geared scooters and for that purpose six thousand employees were employed in the company. However, around late 1990s a significant change in consumer preference from geared scooters to motorcycles occurred which resulted in adverse market conditions causing severe financial loss of approximately Rs. 468 crores to the company. Consequently the Petitioner company was declared a Relief Undertaking under the U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966 (hereinafter referred to as The U.P. Act, 1966) vide notification No. 794/XXXVI-1-2(X) 1 dated 26.4.2004 for a certain period which was subsequently extended from time to time . The company also filed a reference before the Board for Industrial and Financial Reconstrucon(hereinafter referred to as BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) (which was registered as Case No. 80/2006) by order dated 8.5.2007. Adding to the misfortune of the company the workmen of the company resorted to illegal strike , demonstration and struck work and indulged in various subversive activities with effect from 27.2.2006 totally paralysing the company's work and the company in order to protect the company's property had to declare lockout with effect from 7.3.2008. However, after discussions between the management of the company and the sole registered union of the company, namely Lohia Machines Limited Karmchari Sangh, a settlement/agreement was entered into between the company and the union on 13.4.2007 u/s 4-F of the Act read with Rule 5 Sub-rule (1) of the Rules framed thereunder before the Additional Labour Commissioner, Kanpur Region, Kanpur (Annexure 4 to the writ petition).

3. According to Petitioner a small splinter group of workmen describing themselves as "LML Mazdoor Sangthan, who had received all the benefits under the agreement dated 13.4.2007 tried to disturb the peaceful functioning of the company by getting themselves registered under the Trade Unions Act. The Registration so made was challenged by the Petitioner before this Court in Civil Misc. Writ Petition No. 5903 of 2008 Lohia Machines (LML) Karmchari Sangh v. Registrar Trade Unions and Ors. which was allowed by this Court by order dated 23.4.2008 and the registration certificate issued in favour of the Respondent No. 3 was quashed and thus the Respondent No. 3 had no locus to seek reference. According to the Petitioner after agreement/settlement dated 13.4.2007 which was also acted upon and manufacturing in the Petitioner's company started there existed no industrial dispute, whatsoever. However, with a view to disturb the industrial peace the members of the Respondent No. 3 which was an unregistered and unrecognised union tried to raise an industrial dispute u/s 4-K of the U.P. Industrial Disputes Act, and on 21.5.2008 Respondent No. 1 passed the impugned order in a mechanical manner without any application of mind and thereafter a consequential notice dated 28.5.2008 was issued by the Respondent No. 2 requiring the Petitioner to file its statements and other evidences in support of its contentions and hence the instant writ petition has been filed.

4. In the counter-affidavit filed on behalf of Respondent No. 3 it has been stated that the Petitioner has not approached this Court with clean hands and material

facts have been concealed and as such the Petitioner is not entitled to any relief under Article 226 of the Constitution of India.

In the counter-affidavit it has been stated that against the judgment dated 21.4.2008 (wrongly mentioned in the writ petition as 23.4.2008) by which the writ petition preferred by the Petitioner against the registration certificate issued in favour of the Respondent No. 3 was allowed, the Respondent No. 3 had filed Special Appeal No. 834 of 2008, which was admitted on 15.7.2008 and by an order passed on the same date it was provided that the interim order which had been operating during the pendency of the writ petition, shall continue during the pendency of the appeal also.

5. It is also stated in the counter-affidavit that the writ petition against a reference order is not ordinarily maintainable as a mere reference does not affect anyone's right. The Respondent No. 3 in the counter-affidavit has further stated that the pocket union which was acting against the interest of the workers entered into the settlement with the company which was against the interest of majority of the workmen. The Respondent No. 3 further came up with a case that it was wrong to say that the answering Respondent is a union consisting of small splinter group of workmen, as the total strength of the Respondent No. 3 is 1300 workmen and since the settlement dated 13.4.2007 entered into with the pocket union had in fact affected the rights of the laid off employees kept out of employment and who were also not being paid "lay off compensation " under the Tripartite Settlement/agreement in order to save laid off workmen the Respondent No. 3 union was formed for espousing their cause. The State Government did not commit any illegality while making reference upon being satisfied that an industrial dispute existed.

6. Learned Counsel for the Respondent No. 3 raised a preliminary objection that since the order of reference does not affect the rights of the parties, the writ petition against that order is not maintainable.

In support of his contention learned Counsel for the Respondent placed reliance upon D.D. Gears Ltd. Vs. Secretary (labour) and Others, wherein the Apex Court held that the writ petition against reference u/s 10(1) of the Industrial Dispute Act, 1947 cannot be entertained.

7. Sri Shashi Nandan learned Counsel for Petitioner per contra submitted that the question whether the order of reference can be challenged before the High Court under Article 226 of the Constitution of India, is no longer res-integra and stands finally settled by the decision of the Apex Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others,

8. In the aforementioned case the Apex Court held that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which can be subject-matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here is the question of jurisdiction of the Industrial Tribunal which can be examined by the

High Court in its jurisdiction. It is the existence of the industrial dispute which would clothe the appropriate Government with power to make reference under Industrial Dispute Act by the Industrial Tribunal to adjudicate and if there is no industrial dispute in existence or apprehended, appropriate government lacks power to make any reference.

9. The decision which has been relied upon by the learned Counsel for the Respondent No. 3 namely the case of DD Gears Limited (Supra) in support of his contention is by a Bench of two Judges while the judgment in the Case of National Engineering Industries Limited v. State of Rajasthan and Ors. (Supra) has been delivered by a larger Bench of three Judges of the Apex Court and thus the same is a binding precedent.

10. For the aforesaid reasons the preliminary objection raised on behalf of the Respondent No. 3 mat writ petition is not maintainable against the order of reference has no merit and is accordingly turned down.

11. I now proceed to examine the validity of the reference order on merits.

As noted hereinabove an order of reference can be assailed in a writ petition if the aggrieved person is able to show that there is no industrial dispute and none apprehended which can be subject-matter of reference for adjudication to the Industrial Tribunal as held by Apex Court in the case of National Engineering Industries Limited (Supra).

Learned Counsel for Petitioner contended that a settlement having taken place on 13.4.2007 which was signed by the representatives of the Petitioner and the only registered and recognised union of the company namely Lohia Machines Karmchari Sangh in the presence of Additional Labour Commissioner Kanpur Region, Kanpur and Additional Labour Commissioner (IR) U.P. Labour Commissioner Kanpur wherein inter alia it was decided that the workmen will lift the lockout with effect from 15.4.2007 and accordingly the lock out of the factory was lifted on 15.4.2007 in terms of the settlement dated 13.4.2007 and the benefits visualised under the settlement dated 13.4.2007 were availed by all the workmen including the members of the Respondent No. 3 no dispute remained which required adjudication and the State Government committed a patent illegality in making the reference at the behest of the Respondent No. 3 which comprised of a small splinter group of workmen which is neither recognised union nor registered and whose sole object is to somehow frustrate the settlement dated 13.4.2007 without any locus has sought reference.

Learned Counsel for the Petitioner further submitted that the Petitioner was making every possible effort to implement the settlement dated 13.4.2007 by providing employment to the workmen in phased manner as per requirement of work and production and the remaining workmen were laid off and were being paid lay off compensation as per the provisions of U.P. Industrial Disputes Act.

Learned Counsel for Petitioner lastly contended that the registration of the

Respondent No. 3 having been cancelled and the Respondent No. 3 not being the recognised union of the company and which represented a very small splinter group of the workmen employed in the company had no locus to seek reference and the reference so made by the government at the behest of the Respondent No. 3 is totally without jurisdiction and is liable to be quashed.

12. Ms. Bushra Mariam appearing for the Respondent No. 3 opposing the submissions made on behalf of the Petitioner submitted that against the order of this Court dated 21.4.2008 by which the registration certificate issued in favour of the Petitioner was cancelled, the Respondent No. 3 preferred a Special Appeal which has been admitted by this Court and in which interim order has been passed in favour of the Respondent No. 3 and the said Special Appeal is still pending. Hence it cannot be said that the Respondent No. 3 has no right to espouse the cause of the disgruntled workmen of the company and seek a reference.

13. Ms. Bushra Mariam next submitted that the benefits of the absolutely illegal settlement were received by the members of the recognised union of the employees of the company which is in fact pocket union of the company having a total membership of only 400 employees alone whereas the vast majority of the workmen employed in the company did not get any benefit from the settlement and as such the laid off workmen of the company formed Respondent No. 3 to look after the welfare of the majority of the workmen employed in the company.

She further submitted that the Apex Court in *Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others*, has held that it is not necessary that a registered body should sponsor the workmen's case to make it an Industrial dispute and once it is shown that workmen either acting through their union or otherwise have sponsored the workmen's case it becomes an industrial dispute.

Ms. Bushra Mariam lastly contended that the settlement dated 13.4.2007 having not been registered as required by Section 6-B of the U.P. Industrial Dispute Act, 1947, the terms of the said settlement are not binding on all the employees of the company and as such it can not be said that there was no dispute to be referred by the State Government for adjudication to the Industrial Tribunal.

14. After having carefully examined the submissions made by learned Counsel for the parties and perused the impugned orders as well as the materials brought on record, I am of the view that the submissions made by learned Counsel for the Petitioner have no substance while the submissions made by learned Counsel for Respondent No. 3 have force and are liable to be accepted.

15. From the material brought on record it transpires that due to certain financial constraints the Petitioner-company declared lockout with effect from 7.3.2006. Eventually after protracted discussions a settlement was entered into between the company and its recognised union namely Lohia Machines Karmchari Sangh before the Labour Commissioner Kanpur Region and Additional Commissioner

(IR) U.P. Head office Kanpur , copy whereof is on record as Annexure 4 to the writ petition.

16. The attention of this Court has been drawn to Clause 2 of the said settlement/ agreement which reads as under:

That since work and production of scooters is to be started in a phased manner depending on the market requirements and orders, it has been agreed and decided that only such number of workmen shall be taken on work and employment, in phases, as per requirement of work and production and as far as departmental seniority basis. That all other workmen, save and except those who are required to resume work and production and whose names shall be displayed at the notice board of the Company from time to time, shall stand Laid Off. The workmen so Laid Off shall be entitled to receive Lay Off Compensation Compensation ("LOC.") in terms of the U.P. Industrial Disputes Act, 1947 in the manner as discussed and decided hereunder.

17. The record shows that several workmen employed in the company upon having realized that the benefits of the settlement dated 13.4.2007 were confined only to those workmen who were members of the "Lohia Machines Karmchari Sangh" which they termed as "pocket union of the employer/ company" which according to them represented the interest of only a small majority of workmen and which was totally indifferent to the welfare of the majority of the employees of the company who were not the members of the said union, they formed a union describing themselves as "LML Major ETA Sangthan, Respondent No. 3 and claimed that their membership is about 1300 while the total membership of the pocket union is merely 400 workmen and got themselves registered under the Trade Unions Act. The Certificate of registration was duly issued and it was challenged by the Petitioner in a writ petition which was allowed by this Court by order dated 21.4.2008. However, the Special Appeal preferred by the Respondent No. 3 against the order dated 21.4.2008 being Special Appeal No. 834 of 2008 is still pending and in which interim protection has been provided to the Respondent No. 3. It is relevant to note that although the Petitioner had in the writ petition stated that the writ petition filed by the Petitioner against the registration certificate issued in favour of the Respondent No. 3 had been allowed by learned Single Judge of this Court but the Petitioner deliberately concealed the material fact that against the judgment and order passed by learned single Judge the Respondent No. 3 had preferred Special Appeal and the said Special Appeal was admitted on 16.3.2008 and an interim order was passed in favour of Respondent No. 3, although the order dated 16.3,2008 was passed in the presence of the learned Counsel for the Petitioner, which was arrayed as one of the Respondents in the Special appeal itself. This Court feels that the aforesaid suppression of material fact was made by the Petitioner deliberately with a motive to obtain a favorable order by misleading this Court into believing it that the order passed by learned Single Judge has attained finality and the Respondent No. 3 has lost its locus to seek reference to

espouse the cause of those employees of the Petitioner-company who were not the members of the recognised and registered union.

18. Thus the submission made by learned Counsel for the Petitioner that the reference could not have been made at the behest of the Respondent No. 3 is totally baseless and is untenable.

19. The submission made on behalf of the Petitioner that in view of the settlement having been entered into between the Petitioner and the recognised union of the company and all the employees having received the benefits contemplated under settlement the Respondent No. 3 could not have raised a dispute and seek reference is also without any merit and is liable to be rejected .

20. The reliance placed by learned Counsel for the Petitioner on the judgement of Apex Court in the case of Ram Prakash Singh v. Heavy Engineering Corporation 1995 LLR 201 (SC), in support of his aforementioned contention, wherein the Apex Court has held "that where a settlement has been arrived at under Sections 12, 3 and 18 of the Industrial Disputes Act, between the management and the only union and all the employees have received benefits under the settlement, it is not open to such employees to claim that the settlements are not binding on them for the reason that they are not the members of the union, is totally misconceived. The legal proposition laid down in the aforesaid case will not apply to the facts of the present case for the reason that in the case of Ram Prakash Singh and others (Supra) admittedly there was only one union representing all the workers. Whereas in the present case there are two unions one which is recognised by the Petitioner and the other Respondent No. 3 which claims to be representing majority of the workmen.

21. Even otherwise the settlement or agreement in order to be binding is required to be registered u/s 6-B of the U.P. Industrial Disputes Act.

22. Learned Counsel for the Petitioner has miserably failed to show that the settlement dated 13.4.2007 has been registered and in view of the above it cannot be said that the settlement dated 13.4.2007 is binding upon all the workmen of the Petitioner company. The Respondent No. 3 has further come up with a case that only those workmen of the Petitioner's company who are the members of the pocket union have been re-employed, while the majority of the workmen are being deprived of re-employment only because they are not the blue eyed boys of the recognised union.

23. Thus in view of the above it cannot be said that no dispute was existing in the company between the workmen and the Petitioner's company when the reference was made.

The writ petition has no merit and is accordingly dismissed. Costs on the parties.