

(1958) 03 CAL CK 0016
In the Calcutta High Court

Case No : In the matter of an Application under Art. 226 of the Constitution

Madan Gurang and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-03-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12(5)

Citation : AIR 1958 Cal 271 : 62 CWN 345 : (1958) 2 LLJ 206

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Arun Kumar Dutt and Benoy Kumar Sarkar, for the Appellant;

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application under Article 226 of the Constitution by three workmen. It is a novel application. Its main purpose is to secure a mandamus to compel the Government to make a reference of an industrial dispute to an industrial tribunal.

2. The prayers in the petition seek for the issue of a writ of mandamus calling upon the Government to recall, rescind and withdraw the order made in Memo. No. 416 I.R. dated the 8th February, 1957. That order is contained in a letter. The letter concludes by saying

"Under the circumstances Government do not like to intervene in the matter any further".

3. The applicants now seek for a Constitutional writ of mandamus to compel the Government to intervene. In this letter, which is described as an order, the Government states that an enquiry was made into the industrial dispute between M/s Alkali Chemical Corporation of India Ltd. and their workmen. It says further that it transpires that

"Sri Dandasi was transferred from the Fire Station to the Salt Dissolving Plant and not to the yard as alleged by the Union. The transfer was necessary as the management reorganised the Fire Station on a more efficient line. Your allegation that the transfer amounted to demotion has not been found to be correct.

Sri Madan Gurang, the Security Darwan, was dismissed for gross negligence of duty which he committed by leaving the gate unguarded without permission from any higher authority.

Sri Bejoy Patra was charge-sheeted for taking the company's lorry out of the factory without driving licence. Moreover, he has been found to be responsible for the loss of a tyre which was in the lorry when he took it out. From the evidence produced by different witnesses it has been established that Sri Patra is guilty of the charges made against him."

4. On these reasons sufficiently recorded the Government refused to intervene further in the matter. The only intervention by the Government could have been a reference of the matter to the industrial tribunal. The argument on behalf of the applicants is that the Government has usurped the jurisdiction to decide the industrial dispute and allocated the guilt. It is contended that this jurisdiction the Government does not possess. Therefore, the matter must be referred to the Industrial Tribunal.

5. There are many answers to this application. A reference to the Industrial Tribunal is made u/s 10 of the Industrial Disputes Act, The opening words of the section so far as they are material for the purposes of this application are:--

"Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute" etc.

Three consequences follow from this language of the section. First, it is clear from the words of the statute that the power to refer the dispute is in the appropriate Government. The appropriate Government is the only referring authority. Secondly, the opinion that is conclusive whether there should be an order for reference or not is the opinion of the appropriate Government. Thirdly, the Government has the discretion to refer or not to refer a dispute either to a Board, or to a Court of inquiry or to a tribunal. This discretion follows from the use of the word "may" in Section 10 which I have quoted. I am, therefore, satisfied for these reasons that, the Government cannot be compelled by a Constitutional writ of mandamus to make a reference of a dispute.

6. It has been contended on behalf of the applicants for the Rule that there were proceedings before the Labour Commission, West Bengal. Therefore, Section 12(5) of the Industrial Disputes Act should be applied. Now, that provision of the statute says:--

"If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is case for reference to a Board,

or 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 therefore"

7. I should have thought that this statutory provision was entirely against the applicants' contention.

8. In the context of Section 12 the report is the report of the Conciliation Officer. When the Conciliation Officer cannot reach a settlement after the investigation made by him, he sends a report to the appropriate Government setting forth the steps he had taken for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement there on together with a full statement of such facts and circumstances and lessons on account of which in his opinion a settlement could not be arrived at.

9. Now, Section 12(5) of the Industrial Disputes Act makes some points abundantly clear. The first is that the Government considers a report of the Conciliation Officer failing to reach a settlement.

10. Secondly, it is clear that if the appropriate Government is satisfied on such report of the Conciliation Officer that there is a case for reference, it may make such a reference. The authority to be satisfied is the appropriate Government and not this Court or any other institution. Then, again, the word used is "may" and not "must". Reference of a dispute to an Industrial Tribunal is entirely discretionary with such Government and this Court will not in that field of discretion issue a writ of mandamus under Article 226 of the Constitution and compel the appropriate Government to make such a reference.

11. Thirdly, and that is the case which is challenged is the present application, where the appropriate Government does not make a reference, the only obligation upon the Government is to record and communicate its reasons for not making the reference. The Government in this case has done so. Rightly or wrongly it has given the reasons for not making the reference. It is not a usurpation of jurisdiction of the tribunal by the Government. It is a discharge of the Government's own mandatory obligation u/s 12(5) of the Industrial Disputes Act by stating the reasons for not making the reference. After all, u/s 10 the Government alone can refer a dispute. The Government has to be satisfied in some form or other that it is a dispute which should be referred. It is its opinion that counts u/s 10. It is alone the referring authority. Section 12(5) of the Act makes it compulsory for the Government to record and communicate the reasons for not making the reference. The Government has done so in this case in the letter of the 8th February, 1957. I see nothing wrong in the Government's stating its reasons for not making the reference. Those reasons may be right or wrong, but this Court is not the authority under Article 226 of the Constitution to sit in judgment over the merits of the reasons which have impelled the Government not to take any further step in the matter. The Government in this case says in that letter that an enquiry was made into the dispute. It gives the

results of that enquiry with reasons. The report of the Conciliation Officer need not be produced as such by the Government because the statute does not say so. The statute only casts an obligation on the Government to state the reasons for not making the reference and communicate them to the parties. The Government has complied with that statutory requirement in this case.

12. I am, therefore satisfied that neither under the Constitution, nor under any law, nor under any procedure for writs should any Rule issue to compel the Government to make a reference of a dispute to an industrial tribunal when the Government is of opinion and is satisfied that no such reference should be made. This Court will not substitute its own judgment for that of the Government by reason of Section 10 of the Industrial Disputes Act read with Section 12 of the same Act. The Supreme Court decision in the State of Madras Vs. C.P. Sarathy and Another, , is also against the applicant's contention.

13. I, therefore, dismiss this petition summarily without issuing a Rule.