
(1996) 09 DEL CK 0022
In the Delhi High Court
Case No : L.P.A. No. 66 of 1996

Madho Ram

APPELLANT

Vs

P.K. Jain

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Citation : (1997) 75 FLR 643 : (1997) 2 LLJ 1062

Hon'ble Judges : M. Jagannadha Rao, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant;

Judgement

1. This is an appeal preferred against the judgment of the learned single Judge in C.W.P. No. 1202/96 dated March 23, 1996, dismissing the writ petition filed by the appellant workman and refusing to interfere with the award passed by the Industrial Tribunal on January 2, 1996.

2. The writ petitioner Shri Madho Ram claimed, in his statement before the Tribunal that he was employed with M/s. Sandu Traders (employers) as Machine-man for 1 year and was drawing a salary of Rs. 600 p.m. He claimed that his service were terminated on August 24, 1981 when he demanded compensation and wages during the period when he was injured in his left hand and that no prior notice was given. He also claimed that he had sent a registered notice on September 16, 1981 to the employers.

3. In their written statement, the employers alleged that the workman was not in their employment and that there was no relationship of employer and workman and that, in fact, the workman did not receive any injury. Order allegations were also denied.

In his rejoinder, the workman denied the allegations made by the employers. The parties adduced oral and documentary evidence before the Tribunal which framed the following points :

(i) Whether relationship of employer and employee exists in the present case ? If not, its effect (onus on petitioner/ workman).

(ii) As in the reference (onus on petitioner/workman) i.e. whether services of Sh. Madho Ram have been terminated illegally and or unjustifiably, if so, to what relief is he entitled and what directions are necessary in this respect.

4. The Tribunal held on the first point, on a consideration of the oral and documentary evidence that the workman failed to prove that any relationship of master and servant existed between the parties. It noticed that the workman in his evidence as WW 1 stated that he was in the employment of this employer from January, 1981, that in his notice he gave the version that he was employed with this management from 1977, that Before the Compensation Commissioner he stated that when his services were terminated (i.e. on August 24, 1981) he had put in only 6 or 7 months service . He had stated in another case which he filed in 1981 against M/s. Salwan Furniture that he was unemployed. The Tribunal also pointed out that the workman admitted that he had stated before the Compensation Commissioner that he had not incurred any expenses for his medical treatment, that he did not obtain any medical treatment and did not know the name of the doctor. Because of the conflicting evidence of the workman, the Tribunal held that the workman had not proved that there was a relationship of employer and employee between the parties. Thereafter, on Point (ii) the Tribunal held that the workman was not entitled to any relief because of the above finding on point (i). Award was passed on January 21, 1996 accordingly.

5. Before the learned Single Judge, it was argued for the workman that, in view of the language of the reference (see below) the Tribunal was not competent to go into the question of relationship of master and servant between the parties. The learned single Judge rejected the contention and held that the Tribunal could go into the said question as it went to the root of the matter.

6. In this appeal, it is again contended by the learned counsel for the workman that the reference made by the Government implied the existence of relationship of master and servant. The Government in the reference dated June 24, 1982 framed the question as follows :

"Whether the services of Shri Madho Ram have been terminated illegally and/or unjustifiably, if so, what relief is he entitled to and what directions are necessary in this respect ?"

7. The point that arises for consideration in this appeal is : "Whether upon a reference u/s 10(1) of the Industrial Disputes Act, 1947, the Tribunal while adjudicating the dispute u/s 10(4) and deciding matters "incidental thereto" could go into question which go to the root of the matter, such as the existence of relationship of master and servant ?"

Now Section 10(4) of the Industrial Disputes Act reads as follows :

"Section 10(4) : Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those point and matters "incidental thereto."

8. We shall start discussion with the latest ruling of the Supreme Court, in National Council for the Cement and Building Materials (Civil Appeal No. 3519 of 1996 dated February 1996). The Supreme Court, after referring to Section 10(4), clearly pointed out that matters incidental may sometimes assume significant proportions and may relate to questions which go to the root of the jurisdiction of the Tribunal. The Court pointed out that on a reference whenever such issues arose, the Tribunal should deal with such preliminary issues simultaneously with other issues, on merits so that there was no piecemeal adjudication and no scope for delay. There the management contended that its activities did not amount to an "industry" under the Industrial Disputes Act, 1947. The following observations of the Supreme Court in regard to Section 10(4) are important :

"This sub-section indicated that the extent of jurisdiction of the adjudicatory Tribunal is confined to the points specified in the order of reference or matters incidental thereto. Matters which are incidental to the reference may, sometimes, assume significant proportions and may relate to questions which go to the root of the jurisdiction of the Tribunal as for example, questions which go to the root of the jurisdiction of the Tribunal as, for example, questions relating to the nature of the activity of the employer as to whether it constitutes an industry or not, as has been done in the instant case. It is on the determination of this question that the jurisdiction of the Tribunal to adjudicate upon the reference rests."

9. This decision Therefore clearly negatives the appellant's contention. In the above decision reference was made to earlier decisions of the Supreme Court in Cooper Engineering Ltd. v. P. P. Mundhe 1975-11-LLJ-379 S. K. Verma v. Mahesh Chandra 1983-11-LU-425, D. P. Maheshwari v. Delhi Administrations, Workmen employed by Hindustan Lever Ltd v. Hindustan Lever Ltd. 1984-11-LU-391 to the effect that preliminary issues going to the root of the matter could be decided by the Tribunal but the Tribunal must decide such questions along with the other issues on merits, so that there was no delay in the matter. Otherwise, if the award was initially to deal only with the preliminary issue, and the correctness of the same were to be canvassed in the High Court, then decision on the dispute on merits would get postponed till the High Court decided on the preliminary question and if the objection was not upheld, then there would be lot of delay in the decision on the other issues by the Tribunal.

10. A similar view was taken by a three Judge Bench in The Workmen and Others Vs. Hindustan Lever Ltd., . There again the Supreme Court referred to issues which go to the root of the matter and observed as follows :

"In industrial adjudication, issues are two types :

(i) those referred by the Government for adjudication and set out in the order of reference, and

(ii) incidental issues which are sometimes issues of law or issues of mixed law and fact. The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue would go to the root of the matter."

11. In this Court in *Taj Services, Ltd. v. Delhi Administration* 1990 II LLJ 83 it was similarly held that the Tribunal can go into the existence or otherwise of jurisdictional facts and reference was made to *D. P. Maheshwari v. Delhi Administration*. (supra)

12. Learned counsel for the appellant has however relied upon the judgment of a two Judge Bench of the Supreme Court in *Delhi Cloth & General Mills v. Its Workmen* 1967 I LU 423, wherein it was held that where the terms of reference raised an issue about legality and justification of a strike and lock out in a particular mill on a particular date, the Tribunal must confine itself to the question whether the strike and lock out were legal and justified. It was held that the Tribunal could not enlarge the scope of its jurisdiction and decide that there was no strike or lock out.

13. For the purpose of the case before us, we need not go into the applicability of above ruling. Whether the existence of a "strike" or otherwise (or of a lock-out) is a jurisdictional fact or not or was merely a fact which the Tribunal should not have avoided going into, is a question which does not arise in the case before us. We are here concerned with a more fundamental question of inherent jurisdiction of the Tribunal and in regard to which there was clear pleading before the Tribunal. We may point out that apart from a question as to whether the reference can be said to have implied the existence of certain facts referred to in the reference-a question can arise - whether the Tribunal can at all enter upon the adjudication of the reference. For example, if there was no relationship of employer and workman, obviously there was no question of the Tribunal entering upon the reference for adjudication" We Therefore do not think it necessary to go into the applicability of rulings relating to the existence of a strike or lock out, as in the *Delhi Cloth Mills* case (supra).

14. In fact in *D. P. Maheshwari* case (supra) referred to by the Supreme Court in its latest judgment in *National Council for Cement's* case (supra) it was clearly held that the question as to whether the person was a "workman" or not could be decided by the Tribunal as a preliminary issue but that it was to be decided along with other issues arising out of the reference. This decision of the Supreme Court is more directly in point.

15. Appellant's counsel relied on the decision of a Three Judge Bench in *Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another*, but that case is also

not relevant here. There again the reference was whether the" closure "was proper or not. The reference was not whether there was, in fact, a closure of business by the employers. It was held that the Tribunal could not have gone into the question as to the existence of a "closure". It is not necessary for us to into the applicability of the above ruling inasmuch as here, we are concerned with a question relating to the inherent jurisdiction of .Ine Tribunal or rather its very jurisdiction to enter upon the reference.

16. We shall next refer to another decision of this Court relied upon for the appellant which is also distinguishable for the same reason. In the full Bench decision of this Court in M/s. I. T. Development Corpn. v. Delhi Administration 1982 LIC 1309 Del, it was held that the Tribunal could not go into the question whether it was a lock out or closure as the existence of lockout was assumed by the Government though, in fact it was in dispute between the parties before Government. This ruling also does not relate to an issue as to existence of relationship of employer and workman. We may however point out that the Full Bench held that the Government was wrong in assuming a disputed fact to exist and quashed the reference and directed a fresh reference on the question whether there was a lock-out or strike.

17. We shall refer to a few other cases relied upon by the appellants" counsel. So far as Workmen of M/s. Deffii Cloth General Mills v. Management of M/s. Delhi Cloth & General Mills 1972-1-LLJ-99 (SC) is concerned, we find that the reference in that case dated September 9, 1965 stated that from the report of the Conciliation Officer u/s 12(4), it was to be inferred that an "Industrial dispute exists" and that the same was being referred. The Tribunal framed Point 2 : Is the reference incompetent because of settlement dated June 9, 1965 between DCM (City Shop) and Karamchari Union and Management ?" and the Tribunal held that the settlement was arrived at, on behalf of workmen, not by any unauthorized person but by authorised persons and was one binding on them and there was no industrial dispute. The Supreme Court held that the Tribunal ought to have in fact gone into the question as to whether settlement complied with the provisions of Section 18(1) and Rule 58 of the Rules. The matter was remanded. In other words, though the reference stated that the dispute "existed" the Supreme Court noticed that the Tribunal had gone into the question as to the existence of dispute and no the matter was remitted for fresh consideration as to its validity. This case dm not Therefore help the appellant.

18. The judgment of a learned single Judge of this Court in The Management, The Co-Operative Store Ltd. Vs. Ved Prakash Bhambri, says that the question whether the settlement complied with Rule 58 of the Industrial Disputes (Central) Rules, 1957 could be gone into by Tribunal while determining the reference relating to the legality of the termination of the workman. The decision, if at all, helps the respondent.

19. The Judgment in New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others, is not relevant. There the question was only about the

justness or fairness of a statement accepted by a majority of the workmen.

20. Before parting with the case, we have to refer to the judgment of the Constitution Bench of five Judges of the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, . Reversing the Judgment of the Madras High Court, the Supreme Court held that the Government could make a reference of the industrial dispute in very general terms and that merely because the dispute was not particularised, the reference was not bad. In that context the Supreme Court observed that Government while making a reference u/s 10(1), was only doing an administrative act and the fact that it had to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function did not make it any the less administrative in character. In that context, it no doubt initially observed : "The Court cannot, Therefore, canvass the order of reference closely to see if there was any material before the Government to support conclusion, as if it was judicial or quasi judicial determination."

21. But the Court again cautiously stated that "it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that Therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad.... merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. "Even this decision accepts that it can be contended before the Tribunal that there was no industrial dispute as defined in the Act. In any event, it does not deal with a question of jurisdiction such as the one arising in the case before us.

22. These latter decisions relied upon by the appellant do not, in any event, say that the existence of the relationship of employer and workmen cannot be gone into by the Tribunal if there were pleadings therefore, and even though the existence of such relationship was assumed in the order of reference.

23. We Therefore agree that the learned single Judge was right in dismissing the writ petition on the ground that the Tribunal could go into the question of relationship of employer and workman. LPA is dismissed.