

(2003) 07 GUJ CK 0075

In the Gujarat High Court

Case No : Special Civil Application No. 12531 of 2002

Maize Products

APPELLANT

Vs

Gujarat Kamgar Panchayat

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(1)(c), 10(1)(d), 12, 22

Citation : (2003) 3 GLH 42

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

Bench : Single Bench

Advocate : Sudhir Nanavati, for Nanavati and Nanavati, for the Appellant; G.M. Joshi for respondent No. 1 and Ms. Paurami Sheth, AGP for respondents No. 2-3, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—By filing this petition under Arts. 226 / 227 of the Constitution of India, the petitioner-Company has challenged the order dated 9-9-2002, passed by the learned Judge, Industrial Tribunal, Ahmedabad, by which the learned Judge has rejected the interim application submitted by the petitioner-Company. At the instance of the respondent-Union, the Competent Authority has referred the industrial dispute for its adjudication to the Industrial Tribunal, Ahmedabad, and the said reference, being Reference (IT) No. 130 of 2001, is pending for adjudication before the Tribunal. The Deputy Commissioner of Labour, Ahmedabad, by his order dated 6-9-2001, has referred the said reference to the Tribunal, which is raised on behalf of one Dhulabhai and 157 workmen. The terms of reference, in substance, are as under :-

"(1) Whether the workmen whose names have been mentioned in Schedule B have been retrenched without following the procedure of law by not giving them any work with effect from 20-10-1999, and

(2) Whether such workmen are entitled to be reinstated in service with

consequential benefits."

As stated earlier, the said dispute is referred to the Tribunal for its adjudication. It is not in dispute that the said reference is made u/s 10(1)(c) and Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act", for short). It is required to be noted that, prior to the aforesaid reference, initially, reference was made u/s 10(1)(c) of the Act and the same was referred to the Tribunal for its adjudication. At that stage, when such earlier reference was pending before the Tribunal, on behalf of the petitioner-Company, a special civil application was filed before this Court on the ground that the reference before the Tribunal is not competent and that the Tribunal has no jurisdiction to adjudicate the same. It is not in dispute that the earlier reference was made under clause (c) of subsection (1) of Section 10 of the Act and the same was referred to the Tribunal for adjudication. The grievance of the petitioner-Company in the earlier petition was that the question whether the reference before the Tribunal is competent or not is required to be decided, by framing a preliminary issue, as, according to the petitioner, this being a pure question of law, the same can be decided without recording the evidence of the parties to the reference. This Court (Coram: R.R. Tripathi, J.) accepted the aforesaid contention raised on behalf of the petitioner and this Court was of the opinion that since the reference is made u/s 10(1)(c) of the Act, the Tribunal has no jurisdiction to decide the said reference, as, under clause (c) of subsection (1) of Section 10, it is only the Labour Court, who can decide the reference and not the Tribunal. This Court accordingly quashed and set aside the said reference and accordingly the petition was allowed. Subsequently, now a fresh reference has been made by the Competent Authority, which is u/s 10(1)(c) and Section 10(1)(d) of the Act to the Tribunal for its adjudication, which is numbered as Reference (IT) No. 130 of 2001. During the pendency of the aforesaid reference, on behalf of the petitioner-Company, at Exh. 56. By the aforesaid application, certain preliminary contentions were raised by the petitioner to the effect that even though the reference is made u/s 10(1)(c) and Section 10(1)(d) of the Act, in substance, it is u/s 10(1)(c) of the Act only, as, the workmen were on illegal strike and that there was no question of retrenchment of any of the employees by the management. The say of the petitioner-Company before the Tribunal is that the concerned workmen were on illegal strike and that fact is admitted by more than 100 casual workmen, who were also on illegal strike, along with the present set of employees, and that, accordingly, the reference is required to be rejected. Before the Tribunal, a stand was taken that since the reference in question is made substantially u/s 10(1)(c), the Tribunal has no jurisdiction to decide the same. It was also argued that the Assistant Labour Commissioner has no jurisdiction to refer the dispute, as, it is only the Commissioner of Labour who is the authority, who can refer the dispute for adjudication. Another preliminary contention was taken to the effect that the Tribunal has not complied with the provisions of Rule 16 of the Industrial Disputes (Gujarat) Rules, 1966. By preferring the aforesaid interim application, it was prayed that these points may

be decided as "preliminary issues", before taking up the reference for deciding the same on merits. The Tribunal, by its impugned order dated 9-9-2002, rejected the said application. It is this order, which is under challenge at the instance of the present petitioner.

2. The petition is filed against an interim order, by which, the Tribunal has declined to decide certain issues as "preliminary issues". The petition is argued at length by Mr. Nanavati, learned Senior Advocate, to substantiate his say that the Tribunal should have decided all these questions as "preliminary issues", and should have answered those preliminary issues in favour of the petitioner, by holding that it has no jurisdiction to proceed with the reference in question.

3. So far as the first contention of Mr. Nanavati, by which it is submitted that the Reference in question is substantially u/s 10(l)(c), and not u/s 10(l)(d), is concerned, reference is required to be made to the provisions of Section 10 of the Act. Relevant provisions of Section 10 of the Act provide as under:

"10. Reference of disputes to Boards, Courts or Tribunals.-(l) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,-

xxx xxx xxx

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :]

[Provided further that] where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

[Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]"

Reference is also required to be made to the Second Schedule and the Third Schedule of the Act which read as under :

"THE SECOND SCHEDULE (See Section 7)

MATTERS WITHIN THE JURISDICTION OF LABOUR COURT

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule."

THE THIRD SCHEDULE (See Section 7-A)

MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

1. Wages, including the period and mode of payment;
2. Compensatory and allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed."

4. It is not in dispute that the Reference, which is referred for adjudication, is referred u/s 10(1)(c) and Section 10(1)(d) of the Act, and it cannot be said that the said Reference is, in any way, not within the purview of the Tribunal, especially when the Reference is also u/s 10(1)(d) of the Act, as the demand of the workmen is also in relation to the retrenchment order. Considering the provisions of the Act and the Schedule, in my view, it cannot be said that the Tribunal has no jurisdiction to decide such Reference.

5. Mr. Nanavati, however, submitted that, as per the Schedule, the matter is required to be adjudicated only by the Labour Court, as, this is a case in which the workmen resorted to illegal strike, and no retrenchment order is passed by

the Management. This argument is adequately dealt with by the Tribunal and the Tribunal has come to the conclusion that, the points, whether it is a case of illegal termination of services by the employer or, whether it is a case of illegal strike or whether it is a case of retrenchment etc., can be decided only after appreciating the evidence on record. As stated above, these points can be decided only after appreciating the evidence on record, after the parties adduce appropriate evidence in this behalf. These points cannot be decided only by considering the written statement of the petitioner-Company in this behalf, as, these are serious issues, which are to be decided by the Tribunal.

6. So far as the question about jurisdiction is concerned, in my view, since the demand in question is referred for adjudication to the Tribunal u/s 10(I)(c) and Section 10(I)(d) of the Act, it cannot be said that the Tribunal has no jurisdiction to decide the said issues and that its jurisdiction is excluded in any manner. Considering the provisions of Section 10 of the Act as well as considering the Second and Third Schedules, the Tribunal is justified in coming to the conclusion that, it has jurisdiction to decide the said questions. As per item No. 10 of the Third Schedule, the matter of retrenchment of workmen is within the jurisdiction of the Tribunal. As stated earlier, the question, whether it is a case of retrenchment or otherwise, is required to be decided by the Tribunal only after evidence is led by the parties before it.

7. Mr. Nanavati next argued that, even otherwise, the Deputy Labour Commissioner has no jurisdiction to refer the dispute. The said contention is also not tenable for the simple reason that by the notification dated 26-3-1973, Deputy Commissioner of Labour, Ahmedabad is empowered to exercise the powers in the matter of reference u/s 10(I)(c) and under sub-sections (4) and (5) of Section 12 of the Act and for the matters specified in Item 3 of the Second Schedule and Item 10 of the Third Schedule. The notification dated 26-3-1973 reads as under.:

"EDUCATION AND LABOUR DEPARTMENT Notification Sachivalaya, Gandhinagar, 26th March, 1973

INDUSTRIAL DISPUTES ACT, 1947

"No. KH-SH-366/ID A-1072-4618(ii)-Jh.-- In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (XIV of 1947), (hereinafter referred to as "the said Act") and in supersession of Government Notification, Education & Labour Department No. KH-SH-4817-IDA-1072-Jh, dated the 31st July 1972, the Government of Gujarat hereby directs that the powers exercisable by it under subsection (1) of Section 10 and sub-sections (4) and (5) of Section 12 of the said Act shall, in relation to the matters specified in item 3 of the Second Schedule, and item 10 of the Third Schedule, to the said Act, be exercisable also by all the Deputy Commissioners of Labour, Ahmedabad, in respect of the whole of the State of Gujarat."

EDUCATION AND LABOUR DEPARTMENT Notification Sachivalaya, Gandhinagar,

26th March, 1973

INDUSTRIAL DISPUTES ACT, 1947

"No.KH-SH-367/IDA-1072-4618(iii)-Jh.-- In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (XIV of 1947), (hereinafter referred to as "the said Act"), the Government of Gujarat hereby directs that the powers exercisable by it under sub-section (1) of Section 10 of the said Act shall, in relation to the matters specified in item 3 of the Second Schedule, and item 10 of the Third Schedule, to the said Act, be exercisable also by all the Assistant Commissioners of Labour within their respective jurisdiction."

Considering the said Notification, so far as Item No. 10 in the Third Schedule is concerned, the Assistant Commissioner of Labour is empowered to exercise the powers of the Government.

8. Mr. Nanavati, however, argued that by virtue of the notification, dated 18-8-2001, it is only the Commissioner of Labour, who is empowered to exercise such powers. By the aforesaid notification, earlier notification dated 21-4-1982 is cancelled. However, the said notification operates in an entirely different field altogether. Mr. Joshi has rightly pointed out that by the Notification dated 18-8-2001, the earlier Notification dated 21-4-1982 is superseded and no other Notification is superseded by the same. By the said Notification of 2001, the only change which is incorporated is in respect of Industries, which are under the control and administration of the Central Government or the State Government, as, originally, the number prescribed was 500, which is changed to 100. So far as the present controversy is concerned, it is between the petitioner, which is a private employer and its workmen. It is submitted that the said notification is of 2001 and that earlier notification of 1973 is not cancelled and it still holds the field, for which he has relied upon the earlier notification of 1982, copy of which is placed on record. He has relied upon clause (2) of the Table wherein earlier strength of the workmen, which was mentioned as 500, is now amended to 100. It is submitted that, only for that purpose, the said notification is issued.

As stated above, the earlier Notification dated 26th March, 1973 is still in force and the said Notification clearly gives powers to the Deputy Labour Commissioner, Ahmedabad, to exercise powers available to the State Government under sub-section (1) of Section 10 and sub-sections (4) and (5) of Section 12 of the Act in respect of all matters covered under item 10 of the Third Schedule. It, therefore, cannot be said that the Deputy Commissioner has no jurisdiction to refer the matter to the Tribunal. As stated earlier, in the present case, the issue is in respect of item No. 10 of the Third Schedule and, therefore, the Deputy Commissioner is entitled to refer the said dispute. The said contention of Mr. Nanavati is without any substance.

9. It is next argued by Mr. Nanavati that the procedure prescribed under Rule 16 of the Industrial Disputes (Gujarat) Rules, 1966 (hereinafter referred to as "the Rules" for short) is not followed by the Tribunal. At this stage, reference is

required to be made to Rule 16 of the Rules, which reads as follows.:

"16. Notice to be served.- On an industrial dispute being referred for adjudication to a Labour Court or Tribunal, the Labour Court or the Tribunal shall cause notices to be served on the parties in forms IV, V, VI, VII and IX directing them to file their statements of claims or written statements, as the case may be, within a specified time."

10. It is not in dispute that the petitioner Compnay has already filed its written statement, which is on record of the Tribunal. It is required to be noted that it is not a general reference, as the Reference is made on behalf of individual workmen, whose names have already been given along with the Schedule and the dispute regarding retrenchment is always to be treated as an "individual dispute", as it depends upon the facts of the case of each workman. It is also not in dispute that the concerned parties to the dispute have already submitted their pleadings. Even otherwise, even assuming that the said rule, which is required to be followed, is not followed, the present petitioner is not prejudicially affected, as, the petitioner has already filed written statement within the prescribed time. It is, therefore, not open for the petitioner to raise any grievance in this aspect. Since no prejudice is caused to the petitioner, in any manner, and since the parties to the dispute have already submitted their pleadings, there is absolutely no substance in the aforesaid contention of Mr. Nanavati that there is a breach of Rule 16 of the Rules, to the effect that, the notice, as contemplated by the said provision, is not issued.

No other points have been raised by Mr. Nanavati.

11. I do not find any substance in any of the points raised by Mr. Nanavati, and as stated earlier, the petition is filed at an interlocutory stage and the Reference is still at large before the Tribunal. Since there is hardly any substance in any of the contentions, the petition is required to be rejected.

12. Mr. Joshi further submitted that this petition is filed against an interim order and the main reference is still at large before the Tribunal. He further submitted that this Court cannot exercise its extraordinary jurisdiction under Article 227 of the Constitution of India against the said interim order. In order to substantiate his say, Mr. Joshi has relied upon the decision in D.P. Maheshwari Vs. Delhi Administration and Others, , wherein it is observed as under in paragraph 1:-

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage

of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold partadjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be satisfied by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Art. 136 is preliminary supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

13. On the other hand, Mr. Nanavati argued that since the petitioner is challenging the order of reference made by the Deputy Commissioner, which is a State authority, part of the matter can be treated to have been filed under Art. 226 of the Constitution of India. For this purpose, Mr. Nanavati also relied upon the decision rendered in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, to substantiate his say that this petition can be entertained even at an interim stage. However, since the points raised by Mr. Nanavati are decided on merits and since I am not rejecting this petition on the ground that it is not maintainable at an interlocutory stage, especially when both the sides have argued the matter on the merits of the issue, this question whether the petition is maintainable or not is not of much relevance in view of the aforesaid fact.

14. At this juncture, Mr. Joshi pointed out that as the earlier reference made in 1999 is set aside by this Court, and, subsequently, this fresh reference is made, the existing reference may be ordered to be adjudicated forthwith since the workmen, on whose behalf the reference is made, are out of job since 1999. Considering the fact that, the original reference was made in 1999, and,

considering the fact that the question, which is required to be decided by the Tribunal, is, whether it is a case of illegal termination of service of workmen / retrenchment / illegal strike, this is a fit case in which the Tribunal should adjudicate the said issue at the earliest. The Tribunal is accordingly directed to decide the reference as early as possible, and latest by 31-1-2004. This petition is accordingly rejected. Notice is discharged with no order as to costs.

Writ to be sent forthwith.