

(1984) 07 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No"s. 13478 to 13480 of 1979

Management of Charak Bhandar

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 24-07-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 12 (5), 2 K

Citation : (1985) ILR (Kar) 248

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; S.B. Swethadri, for R-2 and 3 and N. Devadas, HCGP for R-4, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—In these Petitions the Petitioner-the Management of the Charak Bhandar, Evergreen Industrial Estate, Bombay has questioned the legality of the reference made by the State Government u/s 10(1) of the Industrial Disputes Act as also the two orders of the Labour Court made on preliminary issues.

2. The facts of the case in brief are as follows : The Petitioner is a partnership firm and is an industry as defined u/s 2(k) of the Industrial Disputes Act (shortly the Act). Respondents-2 and 3 were engaged as commission agents and medical representatives in this State. Their services were terminated by the Petitioner with effect from 27-5-1974. Aggrieved by the order of termination respondents-2 and 3 raised an industrial dispute before the Conciliation Officer. As there was no agreement between the parties a failure report was submitted to the State Government. Thereafter the State Government by an endorsement dated 4-3-1977 (Ex. A) refused to refer the dispute. Thereafter the State Government made an order dated 2-7-1977 (Ext-B) by which the dispute was referred for industrial adjudication. In the reference the Petitioner raised two preliminary objections. One of the objections was that as the Petitioner was an industry situated in the State of Maharashtra and it had no branch office in this State

even if there was an industrial dispute the appropriate Government which was competent to make the reference was the Government of Maharashtra and not the Government of this State. Another objection raised by the Petitioner was that the State Government could not have referred the question as to whether respondents-2 and 3 were workmen, for industrial adjudication for the reasons, that unless the Government was of the view that Respondents-2 and 3 were workmen there would be no industrial dispute and there-fore there was no competence on the part of the State Government to make reference, u/s 10(1) of the Act. Both these preliminary objections were rejected by the orders dated 31-3-1979 (Ext. C) and 19-12-1978 (Ext. D), by the Labour Court Thereafter the Petitioner has presented this Petition, not only questioning the legality of the aforesaid two orders of the Labour Court, but also the reference itself.

3. Sri B.C. Prabhakar, Learned Counsel for the Petitioner urged the following contentions :

1) The order of reference dated 2-7-1977 was invalid on the ground that it was in violation of rules of natural justice as no opportunity of hearing was given to the Petitioner though the State Government had, for recorded reasons, rejected to make the reference by its earlier order dated 4-3-1977 Ex-A.

2) The view taken by the Labour Court that the State Government, even without coming to the conclusion that Respondents-2 and 3 were workmen, could make a reference was patently untenable and perverse.

3) The view taken by the Labour Court that the Government of this State was the appropriate Government for making the reference was also not tenable.

4) The facts necessary for considering the first two contentions are the endorsement dated 4-3-1977 and the order of reference dated 2-7-77. The relevant part of the endorsement dated 4-3-1977 issued by the State Government u/s 12(5) of the Act reads thus :

"With reference to the above subject, I am directed to slate that Government consider that the dispute in question has no prima facie case for reference for adjudication for the reason that the employees in question were not "workmen" within the meaning of the Industrial Disputes Act, 1947 as on the alleged date of termination of their service"

As can be seen from the above endorsement the State Government declined to refer the matter for industrial adjudication on the ground that Respondents-2 and 3 were not workmen. After about 4 months thereafter the State Government made the impugned order of reference dated 2-7-1977 which reads :

GOVERNMENT OF KARNATAKA

No. SWL 728 LLD 76

Karnataka Government Secretariat Vidhana Soudha, Bangalore, Dated 2-7-1977

ORDER

Whereas the Government of Karnataka are of opinion that an Industrial Dispute exists between the workmen and the management of Charak Bhandar Evergreen Industrial Estate, Bombay-11 on the points noted below;

And whereas the Government of Karnataka consider it desirable to refer the dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Karnataka hereby refer the said dispute for adjudication to the Labour Court at Bangalore.

POINTS OF DISPUTE

I. Whether Sriyuths N. R. Krishnamurthy and Taranath, Sales Organiser working with the Management of Charak Bhandar, Evergreen Industries Estate, Bombay, from 1957 and 1982, come under the definition of workmen under the Industrial Disputes Act, 1947 ?

II. If so, the action taken by the management is justified in terminating the services of the above noted persons with effect from 27-5-1974 ?

By Order and in the name of the Governor of Karnataka

Sd/- (K. Mylarappa) Under Secretary to Government Social Welfare & Labour Department.

As can be seen from the aforesaid order, while in the preamble to the order, Government proceeded to state that it was of the opinion that an industrial dispute existed between the two workmen and the Petitioner-management, the first point of dispute referred for adjudication was, whether Respondents-2 and 3 were workmen, and there is no dispute that this order was passed without giving any opportunity to the Petitioners.

5. In support of the first contention the Learned Counsel for the Petitioner relied on a full Bench decision of this Court in Tangi Doddappa -v.- The State and Others W.P. 1316 of 1978 Dated 18-4-1983, in which it was held that if the Government had refused to refer a dispute for industrial adjudication and communicated its decision in terms of Section 12(5) of the Act, though it had the power u/s 10(1) of the Act to refer the same dispute for industrial adjudication, it could do so only after informing its intention to refer the dispute, to the employer concerned and only after considering the representation, if any, made by the employer. The said judgment fully supports the first contention urged for the Petitioner.

6. In support of the second contention, before the Labour Court, the Petitioner had relied on the judgment of this Court in The Association of the Physically Handicapped -v.- The State of Mysore and others. W.P. 4222 of 1974 Dated

3-3-1975 In the said case the first point referred for adjudication was, whether the Association of the Physically Handicapped was an industry or not. The validity of the said order was questioned before this Court on the ground that unless the Government formed an opinion that the said association was an industry without which there could be no industrial dispute, the Government had no competence u/s 10(1) of the Act to make a reference, as formation of an opinion that an industrial dispute existed, was a condition precedent to make a reference in exercise of the power u/s 10(1) of the Act. The said contention was accepted by this Court and it was held that even though the Government notification began by saying that in its opinion an industrial dispute existed, the first point of reference itself contradicted the said statement, for the question as to whether the Association was an industry or not, was not at all decided by the Government and was left to be decided by the Labour Court. The ratio of the said judgment fully applies to the present case also, but nevertheless the Labour Court lightly brushed aside the judgment of this Court and held that the first point was rightly referred by the Government stating that the first point referred in that case was whether the Association of the Physically Handicapped was an industry, whereas the question referred in this case was whether Respondents 2 and 3 were workmen. The existence of an "industry" and workmen" both are essential to bring into an existence an industrial dispute. If the State Government cannot refer the question as to whether a particular establishment was an industry for industrial adjudication, equally the Government cannot also refer the question as to whether the persons concerned were workmen or not. It may be that in a given case if substantial number of workmen or a Trade Union raises an industrial dispute, concerning the dismissal from service of one or more employees of an industry and the employer raises an objection that dismissed employees were not "workmen" the Government could refer the question as to whether the dismissed employees were workmen, for in such a case notwithstanding the fact that the dismissed employees are not workmen, the dispute still would be between the employer and the Trade Union or substantial number of workmen. But that is not the position here. The dispute was raised by two individuals, in view of Section 2-A and the Government could refer the dispute, if only it was of the view that they were workmen. Therefore on this ground alone the impugned order of reference is liable to be set aside.

7. As far as the third contention is concerned Sri S.B. Swethadri, Learned Counsel for Respondents 2 and 3 submitted that the Petitioner had its branch office in the State of Karnataka which fact was disputed by the Learned Counsel for the Petitioner. The further contention of the Learned Counsel appearing for Respondents 2 & 3 is that as services of Respondents 2 and 3 were engaged in this State and at the time when their services were terminated they were serving within the State of Karnataka, the Government of this State was the appropriate Government to make the reference. As the impugned order is liable to be quashed on the first two contentions it is unnecessary for me to examine this contention and I leave it open to be considered by the Government.

8 In the result, I make the following :

ORDER

The Writ Petitions are allowed. The impugned order dated 2-7-1977 is set aside. The State Government shall make a fresh reference if it considers that Respondents 2 and 3 are workmen as defined u/s 2(a) of the Act and that it is the appropriate Government to make the reference, but it shall do so only after giving opportunity to the Petitioner.