

(1993) 11 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1777 of 1985

Management of Electronic Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-11-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1994) 2 LLJ 929 : (1993) 105 PLR 345

Hon'ble Judges : Jawaharlal Gupta, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Rajinder Goel, for the Appellant; DeepaK Sibal and N.K. Khosla, for the Respondent

Final Decision : Allowed

Judgement

Jawaharlal Gupta, J.—The Management of Electronics Limited, Faridabad is the petitioner. It terminated the services of respondent No. 3 on July 6, 1980. Feeling aggrieved by the order of termination, the workman served a notice of demand. After consideration of the matter, the competent authority vide order dated October 17, 1980 declined to make reference. A copy of this order has been produced as Annexure P-2. Subsequently, on February 19, 1981, the Government in exercise of the powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), referred the case to the Industrial Tribunal, Haryana, Faridabad. The learned Tribunal vide its decision dated December 9, 1982 held that the concerned employee was a workman under the Act. A copy of this order has been produced as Annexure P-8. The petitioner challenged this order through Civil Writ Petition No. 1436 of 1983 which was dismissed in limine. The Tribunal then proceeded to record evidence and gave its award on August 24, 1984. A copy of this award has been produced on the record as Annexure P-46 to the petition. By this award, the Tribunal has found that the provisions of Section 25F have not been complied with by management before terminating the services of the workman.

Consequently, the order of the termination has been held to be illegal. However, the Tribunal has further found that the petitioner had purchased two trucks after the termination of his services and his income from these trucks could not be less than the wages which he was drawing. Consequently, the claim for back wages has been declined. Aggrieved by this award the management has approached this Court through the present writ petition.

2. Mr. Ashok Aggarwal, learned counsel for the petitioner, has submitted that respondent was working as a Supervisor with the Management. He was not workman. In any case, he had purchased trucks and was running his own business. He had remained on leave for a long time from January 2, 1980 onwards. Learned counsel referred to the applications for leave, copies of which have been produced as Annexures P-13 to P-26 to contend that the workman was gainfully employed and that no case for ordering the reinstatement of the respondent was made out. It was further contended by the learned counsel that in the circumstances of the present case, the reference of the dispute by the State Government was in violation of the principles of natural justice and on that ground alone, the award deserved to be quashed. Learned counsel for the respondents have controverted the claim made on behalf of the petitioner.

3. The primary question that arises for consideration is--was the reference u/s 10(1)(d) of the Act violative of the principles of natural justice? If the petitioner succeeds on this question, then the necessity of considering the other points is obviated.

4. It is the admitted position that vide order dated October 17, 1980 a copy of which has been produced as Annexure P-2 with the writ petition, the State Government had refused to make a reference on the ground that the respondent did not "come within the definition of "workman" contained in Section 2(s) of the I.D. Act." However, vide its order dated February 19, 1981, the Government made the impugned reference to the Tribunal. Learned counsel for the petitioner submits that no opportunity having been given, the action of the Government was violative of the principles of natural justice. He submits that the petitioner-Management was entitled to put forth its viewpoint. If such an opportunity had been granted, it could have succeeded in persuading the Government to form an opinion that no industrial dispute requiring adjudication existed. Learned counsel has placed firm reliance on two decisions of this Court in *Escorts Ltd. Faridabad v. Industrial Tribunal, Faridabad and Ors.* 1983 LIC 223 and in *Civil Writ Petition No. 14759 of 1992* decided on July 28, 1993.

5. Learned counsel for the respondents have, on the other hand, pointed out that even though an issue regarding the validity of the reference had been specifically framed, no evidence was actually led by the petitioner and consequently, the objection was rejected. Furthermore, even the correctness of the views taken by the Division Bench of this Court has been challenged. Learned counsel placed reliance on the decisions of various High Courts to contend that the principle of audi alteram partem was not attracted when the Government made a reference

u/s 10 of the Act.

6. It is true that one of the issues framed by the Tribunal was - whether the reference is bad on account of prior refusal by the State Government? The onus of proving this issue was on the Management. The learned Tribunal has undoubtedly observed that no evidence was led on this issue by the Management. Consequently, it was decided against it. However, the fact remains that the petitioner in its written statement filed before the Tribunal had raised a preliminary objection that "the instant reference is nevertheless invalid and incompetent because the Government of Haryana has acted arbitrarily and capriciously because it had no material to revise its decision and even if it is assumed that it had, it had not furnished any opportunity to the Management to represent its point of view." The respondent-workman had filed a rejoinder. In reply to para 5 of the preliminary objections, he merely stated - "Not admitted. Reference is quite in order." He did not take the position that an opportunity had been given to the Management to represent its viewpoint.

7. A perusal of the record, thus, shows that the petitioner had specifically challenged the validity of the Reference inter alia on the ground that the Government "had not furnished any opportunity to the Management to represent its point of view." The Labour Court did not frame any issue in this behalf. Issue No. 2 as framed by the Court did not cover this matter. Consequently, the petitioner could not lead any evidence in support of the plea. In fact, even though the plea had been raised yet it had not been even controverted specifically by the workman. Furthermore, it is also clear that the plea raised was of consequence. The Labour Court erred in ignoring it. In this situation, the petitioner cannot be debarred from raising the plea that the Reference having been made in violation of the principles of Natural Justice was bad and consequently, the entire proceedings are vitiated.

8. On the merits of the contention, it is clear that there is divergence of opinion amongst the High Courts. While two Division Benches of this Court have taken the view that the rule of audi alteram partem is attracted to the exercise of power u/s 10(1) of the Industrial Disputes Act while referring the matter for adjudication after it had been rejected earlier, certain other High Courts have taken a contrary view. In the case of Escorts Limited (supra), S.S. Sandhawalia, C.J. while speaking for the Bench, had held that "grave and sometimes penal consequences may well ensue and once that is so, the principle of natural justice would inevitably be attracted." The Division Bench also noticed the view expressed by a Full Bench of the Madras High Court in G. Muthukrishnan v. Administrative Manager, New Horizon Sugar Mills Pvt. Ltd. Pondicherry 1980 1 LLJ 215). The same view was taken by a Division Bench of the Karnataka High Court in Indian Telephone Industries Ltd. Vs. State of Karnataka and Others,) which was followed by the Calcutta High Court in American Express International Banking Corporation v. Union of India 1979 LLJ 22). After noticing the decisions of various Courts, the Division Bench held that "the rule of audi alteram partem

is attracted to the exercise of powers a second time u/s 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected earlier." This view of the Division Bench was followed by G.R. Majithia, and N.K. Sodhi J.J. while deciding Civil Writ Petition No. 14759 of 1992.

9. Mr. Deepak Sibal, learned counsel for the State of Haryana, vehemently contended that the view expressed by this Court had been expressly dissented from by the Delhi High Court in *National Council of Applied Economic Research Parisila Bhawan Indraprastha Estate, New Delhi Vs. Delhi Administration and others*,). He also referred to a Single Bench decision of the Allahabad High Court in *U.P. State Electricity Board v. State of U.P.* 1992 LIC 151 and a Full Bench decision of the Kerala High Court in *Management of Theatre Sanjaya Vs. The State and Others*,).

10. It is no doubt correct that a discordant note has been struck by various Courts. However, not only that sitting singly I am bound by the view expressed by the two Division Benches of this Court but it also appears that the view is unexceptionable.

11. An order of reference even though administrative in character has serious civil consequences for the Management. It must, therefore, be made in accordance with the principles of natural justice. It also appears that a Full Bench of the Karnataka High Court consisting of Honble Venkatachaliah, Rama Jois and Bopanna, JJ. (as their Lordships then were) in *Management of Theatre Sanjaya Vs. The State and Others*,) has, after a very thorough and elaborate consideration of the matter, by majority (Bopanna J dissenting) held as under: - (p 435):

"The principle of audi alteram partem is applicable to a case in which the Government having declined to make a reference of dispute for industrial adjudication u/s 10(1) of the Act according and communicating such decision in accordance with the latter part of Section 12(5) of the I.D. Act proposes to refer the same dispute for adjudication subsequently except when:-

(a) the reference becomes necessary under circumstances set out in Section 10(5) of the I.D. Act, or

(b) the Government finds that there are exceptional circumstances in which any delay in making the reference is fraught with serious consequences to industrial peace and, therefore, affording of an opportunity to the party concerned is inexpedient."

The preponderance of judicial opinion is in accord with the view expressed by this Court. Respectfully following the view in *M/s. Escorts (supra)*, it is held that the reference of the dispute to the Tribunal by the State was in violation of the principles of audi alteram partem. It was consequently illegal.

12. Mr. N.K. Khosla, learned counsel for respondent No. 3, submitted that the Industrial Law has been promulgated to help the weaker sections and in case of

doubt, the Court should lean in favour of the workman. In abstract, Mr. Khosla is probably right. However, in view of the finding recorded by the Tribunal itself, the respondent does not appear to be a mere workman. The Tribunal has clearly found that he had purchased two trucks. Nothing has been produced before this Court to show that this finding is without any basis. In such a situation, it cannot be said that the respondent belongs to the weaker Section of the society. Furthermore, the Reference being violative of the principles of Natural Justice, the entire proceedings and the award are vitiated. It is, accordingly, set aside.

13. In view of the above, it is not necessary to go into the questions raised in this petition. The writ petition is allowed. However, in the circumstances of the case, there will be no order as to costs.