

(1977) 02 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 644 of 1970

Manager Rashtradoot Dainik Press

APPELLANT

Vs

Rajasthan Samachar Patra Karmchari Sangh and Others

RESPONDENT

Date of Decision : 25-02-1977

Acts Referred:

General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10, 20

Citation : (1977) RLW 296 : (1977) WLN 129

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.

1.The question that arises for determination in this writ petition is as to whether the State Government is competent to make an amendment by way of addition in a reference made u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), pending adjudication before an Industrial Tribunal.

2. The facts briefly put are that there was an industrial dispute between the Management of five newspapers and their workman, represented by the Rajasthan Samachar Patra Karmchari Sangh, Jaipur (hereinafter called as "the Union") in respect of the implementation of the recommendations of the Wage Board in relation to non-working journalist employees. The State Government, by, its order dated August 30, 1969 referred the following dispute to the Industrial Tribunal u/s 10(1)(d) of the Act.

Whether the work of printing carried on in the under mentioned presses on contract basis is contrary to the recommendations of the wage Board? If so, to what relief are the workmen entitled?

1. Rashtradoot, Jaipur,

2. Dainik Navjyoti, Jaipur,

3. Dainik Navjyoti Ajmer

4. Lokwani, Jaipur,

5. Rajasthan Patrika, Jaipur

3. The Union submitted its statement of claim and in para 15 thereof it was stated that the work of printing carried out in the concerned newspapers on contract system included both composition as well as printing. The Management of the Rashtradoot Printing Press disputed the claim of the workmen alleging that the composition and printing were different departments, which have separate existence. While this matter was being disputed by the parties before the Industrial Tribunal, the State Government issued a corrigendum notification on March 16, 1970 by which it clarified that after the word printing referred to in the order of reference the words like composition printing etc. be added. This latter notification issued by the State-Government dated March 16, 1970 has led to the filing of the present writ petition. The case of the petitioner is that once a dispute was referred by the State Government to the Industrial Tribunal and the same is pending adjudication before the Tribunal, the State Government has no jurisdiction to modify or amend the terms of such reference & that the amendment made by the latter notification has the effect of totally changing the scope of the earlier reference made by the State Government, inasmuch as persons employed in the work of composition were also sought to be included in the dispute referred to for adjudication, by making an amendment in the terms of reference.

4. It may be stated at the outset that, learned Counsel for the petitioner did not dispute that the State Government, was empowered to make a fresh reference to the Industrial Tribunal u/s 10(1)(d) in respect of the workmen employed in the composition department of the concerned printing, presses. Even a supplementary reference could be made. But what is disputed by the petitioner is that the earlier order of reference could not be subsequently amended or altered by bringing within its ambit workmen belonging, to the composition department, as they were not initially included in the original reference, which related only to the workmen employed in the printing department of the concerned printing presses. learned Counsel relied upon the decision of their lordships of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, in support of his contention. In that case the State Government by a notification referred a dispute between the Management of the Bata Shoe Company Ltd. and their 31 workmen for adjudication to an Industrial Tribunal u/s 10(1)(d) of the Act. By another notification a similar industrial dispute between the same Bata Company and its 21 workmen was referred by the State Government to the same Tribunal. By a third notification, the State Government superseded the earlier two notifications and combined the two disputes into one and referred the consolidated dispute for adjudication to the Tribunal. The last notification was

challenged by the Bata Shoe Company before the High Court of Patna and the learned Judge-held that the State Government had no authority to supersede the earlier two-notifications. The Supreme Court in appeal confirmed the view taken by the learned Judge of the Patna High Court and held that the notification issued by the State Government cancelling the earlier two notifications was invalid and ultra vires. The reason which prevailed with their Lordships of the Supreme Court in coming to this conclusion was that supersession or cancellation of the earlier two notifications was in contravention of the other provisions of the Act. After a detailed consideration of the various provisions of the Act, their Lordships came to the conclusion that once a reference was made by the State Government for adjudication to the Tribunal, then it has no power-to withdraw, rescind set aside or cancel" the said reference. Their Lordships held that if the appropriate Government could by implication have the power to cancel its order issued u/s 10(1) of the Act, then the proceedings before the Industrial Tribunal could be rendered wholly ineffective by the exercise of such power by the State Government. Their Lordships held that during the pendency of the proceedings before the Industrial Tribunal, the parties to the dispute should maintain status quo and no action, should be taken so as to disturb industrial peace or prejudice a fair trial of the matter in dispute by the Industrial Tribunal. As the Industrial Tribunal is expected to complete its proceedings expeditiously & to submit its award as soon as practicable on the conclusion of such proceedings, to the appropriate Govt, it would not be proper to hold that the proceedings before the Industrial Tribunal could be terminated or "superseded at any stage and the obligations and the liabilities incurred by the parties during the pendency of such proceedings may be materially interfered with. An argument was advanced before their Lordships on the basis of the provisions of Section 21 of the General Clauses Act that the State Government, which had the power to make an order of reference, could also cancel or supersede the same. But it was held by their Lordships that the provisions of Section 21 of the General Clauses Act embodied a rule of construction and could only be applied so far as they are not inconsistent with the provisions of the Act and, therefore, the power of rescinding and cancelling the original order of reference cannot be invoked in respect of the provisions of Section 10(1) of the Act, by pressing into service the rule of interpretation embodied in Section 21 of the General Clauses Act.

5. The question which has arisen in the present case was raised before Bench of the Madras High Court consisting of Rajamanner, C.J. and Venkatarama Aiyar J. in South India Estate Labour Relations Organisation by its Secretary, representing the South India Estate Labour Relations Organisation Vs. The State of Madras and Others, Venkatarama Aiyar J., speaking for the Court, observed as under in the aforesaid case:

The last point urged is that the Government had no jurisdiction under Act 14 of 1947 to amend a reference made u/s 10 of the Act and that accordingly the Memorandum No. 59049 dated 25-6-1952 amending the reference made on 24-3-1952 is without jurisdiction. The objection is one of form and is without

substance It would have been open to the Government to make u/s 10 an independent reference concerning any matter not covered by the previous reference. That it took the form of an amendment to the existing reference and not an additional reference is a mere technicality which does not merit any interference in these proceedings.

6. The aforesaid observations were placed for consideration before their Lordships of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, and it is important to observe that their Lordships of the Supreme Court did not express their dissent from the view taken by the learned Judges of the Madras High Court and merely distinguished the same on the ground that in the case before them, their Lordships were not considering the power of the Government to amend or add to a reference made u/s 10(1) of the Act. Their Lordships pertinently observed in this connection:

Our present decision is confined to the narrow question as to whether an order of reference made by the appropriate Government u/s 10(1) can be subsequently cancelled or superseded by it.

7. In view of the aforesaid observations, the decision of their Lordships of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, does not assist the petitioner.

8. In *Rivers Steam Navigation Co. Ltd. and others as. Radhanath Hazarika and Ors.* AIR 1960 Assam 39 an identical question was raised before a Division Bench of the Assam High Court and the jurisdiction of the State Government to implead certain persons as parties to the dispute already referred to the Industrial Tribunal by a subsequent notification was questioned. The decision of S.K. Das J., as he then was of the Patna High Court in *D.N. Ganguly and Others Vs. State of Bihar and Others*, , which was later on affirmed by their Lordships of the Supreme Court, was cited and it was held that the Patna High Court did not hold in the above mentioned case that no amendment of the reference was possible in any case whatsoever, but all that was decided in that case *D.N. Ganguly and Others Vs. State of Bihar and Others*, was that no such amendment would be permissible which would nullify the provisions of the Act. Their Lordships of the Assam High Court held that if it was open to the State Government to make a fresh reference u/s 10 of the Act and if the same Tribunal could deal with the matter arising in the subsequent reference, then it could not be understood as to why the amendment of the earlier reference, by adding another dispute to the same could not be permitted. It was further observed:

The power to make the amendment of nature with which we are concerned in the present case therefore flows from Section 10 itself; because if in a given case by some mistake or oversight a person or a party, whose presence was necessary for a proper adjudication of the industrial dispute is not made a party, then it would be the clear duty of the Government making a reference u/s 10, to make such a person a party to the dispute, even by a subsequent notification.

Otherwise the reference itself would be rendered in-fructuous and the duty or the obligation which the statute imposes. upon the Government would not be carried out... It were open to the Govt. to make u/s 10 an independent reference concerning any matter not covered by the previous reference, the fact that it took the form of an amendment to the existing reference and not an additional reference was mere technicality which did not merit any consideration. I should think that Sub-section (5) of Section 10 or sub-section (5) of Section 20 which though in terms may not be applicable to an amount of this character, do in addition support the inference that such amendment would be permissible in law to give effect to the provisions of the statute.

9. Thus their Lordships of the Assam High Court agreed with the decision of the Madras High Court in *South India State case* [2] and held that an amendment in the reference by making an addition was permissible and it was merely a matter of form and not of substance

10. The same view was taken by a Division Bench of this Court in the *Jaipur Spinning and Weaving Mills Ltd. Jaipur v. The State of Rajasthan and Ors.* ILR (1961) Raj. 434 and it was held that what the Government purported to do by the notification and nothing was done thereby to contravene or violate any of the provisions of the Act. The learned Chief Justice who delivered the Judgment of Division Bench observed:

If under the law it was open to the Government to issue a fresh notification amending the points in dispute in the previous case or supplementing certain points for the decision of the Tribunal, we are unable to hold that the procedure followed in the present instance was in violation of the law or unwarranted by the law.

This court in coming to the aforesaid conclusion relied upon the decisions of the Madras High Court in *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*, and of the Assam High Court in *Rivers Steam Navigation Co. Ltd. case* AIR 1960 GAU 39. In *N.N. Chukerwarty State of Assam and Ors.* AIR 1960 GAU 11 another Bench of Assam High Court held that where issues relating to Industrial dispute have already been referred to in Industrial tribunal a subsequent reference they are modified and added, it cannot be held that the latter reference amounted to supersession or cancellation of the previous reference.

11. Thus, from a consideration of all the aforesaid cases, it appears that the crux of the problem is as to whether the amendment which is sought to be made by a subsequent order of the State Government is merely an amplification of or is supplemental to or makes an addition to the matters already referred to for the decision of the Industrial Tribunal, or the Labour Court concerned or whether it amounts to the revocation or cancellation or withdrawal or supersession of the reference already made or of any of the issues contained in the earlier reference. There can be no doubt that the State Government is entitled u/s 10(1) of the Act

to make a fresh and independent reference to the Industrial Tribunal in respect of an industrial dispute and even. learned Counsel for the petitioner does not contest that a separate or even a supplemental reference could have been made by the State Government in respect of the workmen employed in one composition branch of the concerned printing presses. If that could have been done, then it is difficult to appreciate as to what difference would be made if instead of making a fresh reference, the State Government by a subsequent notification, amended the earlier reference, which is merely in the nature of addition to or amplification of the issues already referenced to the Industrial Tribunal. The objection is clearly one of form only and there is no substance in it, as there is no lack of jurisdiction on the part of the State Government. Moreover, amending a reference relating to a pending dispute, by way of addition to or amplification thereof is not inconsistent with any of the provisions of the Act and it does not appear that the adoption of such a course would defeat the purposes of the Act. learned Counsel for the petitioner drew my attention to the provisions of sub Section (5) of Section 10, which authorise the State Government to add to or include in a reference relating to a dispute concerning one establishment pending for adjudication before a Labour Court, Industrial Tribunal or National Tribunal, a dispute of same nature in another establishment, group or class of establishments, whether or not at the time of such inclusion any such dispute may exist or is merely apprehended. However, in my view the provisions of Section 10(5) of the Act do not at all assist the learned Counsel for the petitioner. learned Counsel for the petitioner referred to the decision in *Kesoram Cotton Mills Ltd. Vs. Second Labour Court and Others*, where a learned Judge of the Calcutta High Court upheld the contention that the State Government had no power to add new parties to a reference even though it did not mean supersession or cancellation of the earlier reference. However, the learned Judge hastened to observe:

Although I uphold Mr. Roy in this contention of his I have to observe that the objection is one of form and not of substance. It is always open to the Government to make an independent reference over the suspension of all the 11 workmen, whose names are inadvertently left out of the original order of reference. The State Government may lack in the power to amend the original reference by adding the names of new parties, but nothing prevents it from making an additional reference to the same tribunal so that both the reference may be considered together.

With great respect to the learned Judge, if it was felt by him that the objection was one merely of form and not of substance and if an independent or additional or supplemental reference could have been made by the State Government, then no compelling reason existed for interfering with the order passed by the State Government, adding new parties to the original reference which was pending for adjudication. In *Kesoram Cotton Mills Ltd. Vs. Second Labour Court and Others*, , it was, however, held that the State Government could correct by way of corrigendum an apparent error in the order of reference, but it had no power to

add parties to the reference, apart from the power which it enjoyed under sub Section (5) of Section 10 of the Act. With respect it may be observed that if the State Government could make an addition in the existing reference pending adjuration, of a similar dispute, existing or even where it did not exist but was merely apprehended, relating to another establishment, why it could have no power of adding similar dispute relating to workman employed in the same establishment, though in a different department?

12. Another decision relied upon by the learned Counsel for the petitioner is *Dalmia Cement Ltd. v. Punjab State and Ors.* AIR 1960 GAU 39 where the learned Judge thought that the view taken by Benerjee J. in *Kesoram Cotton Mills Ltd. Vs. Second Labour Court and Others*, was too narrow, while the view taken by Venkatarama Aiyar J. in *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*, and Sarjoo Prasad C.J. in *The Jaipur Spinning and Weaving Mills case* ILR (1961) Raj. 434 was considered to lay down the proposition too broadly & it was observed that it was neither possible nor proper to lay down definitely the circumstances in which it is open to the State Govt. to amend or not to amend any clerical or other errors in the original notification issued u/s 10(1) of the Act. Thus it appears that their Lordships of the Punjab H.C. left the matter at large, to be decided on the facts and circumstances of each case, and did not precisely lay down a definite proposition of law in this matter. As I have already observed above, in the present case, the subsequent order issued by the State Government does not supersede or cancel the reference already made by the earlier notification dated August 30, 1969 and has not the effect of revoking or putting at naught the reference already made, but it is in the nature of an addition or clarification or amplification of the reference originally made by the State Government on August 30, 1969. The dispute relating to the workmen employed in the printing work carried on in the specified printing presses on contract basis was referred for adjudication to the Industrial Tribunal. However, it appears that before the Industrial Tribunal the question was raised as to whether the reference included the workmen who were employed in the printing department only of the aforesaid printing presses or also the workman employed in the composition department of such printing presses as well. While the employees in the statement of their case asserted that the case of workers employed on contract basis in the printing presses, both in the printing department as well as the composition department was referred, the employers on the other hand, contended that only the case of the workers employed in the printing department of the concerned printing presses was referred. The State Government in order to clarify the position issued the corrigendum notification dated March 16, 1970 making it clear thereby that the word "printing" referred to in the original order of reference included the work of composition and printing etc. carried on in the concerned printing presses. I am unable to hold, in these circumstances, that the subsequent notification dated March 16, 1970, which was merely of a clarificatory nature and had only supplemented or amplified the matter, was passed without jurisdiction. It is not

disputed that the workmen employed in the composition department were employees of the same establishments whose disputes were already referred by the earlier order of reference dated August 30, 1969 for adjudication to the Industrial Tribunal and if under the provisions of sub-Section (5) of Section 10 of the Act, similar cases of different establishments could be referred, there is no reason to hold that similar cases of workmen employed in other departments of the same establishments could not be referred by making an amendment in the nature of addition to the earlier order of reference.

13. In view of the aforesaid discussion, the writ petition has no merit and is dismissed. The stay order passed by this Court shall also stand vacated.