
(2000) 12 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 21156 (W) of 2000

Mecon Limited

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2001) 1 LLJ 1383

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : P.S. Sen Gupta and Manas Kumar Kundu, for the Appellant; K.H. Dasan, Mala Chakraborty and Jayanthi Dhar Wuader, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—By this writ application the writ petitioner, the Company, has challenged an order of reference dated June 8, 2000 issued by the Assistant Secretary to the Government of West Bengal u/s 10 of the Industrial Disputes Act ("Act") before the 9th Industrial Tribunal, Durgapur.

2. There is no dispute that petitioner has already entered appearance and filed written statement before the Tribunal.

3. The grievance of Mr. Sengupta, the learned counsel appearing on behalf of the petitioner in this writ application is twofold.

First, Mr. Sengupta has contended that there was no sufficient material before the appropriate Government to refer the dispute to the Tribunal u/s 10 of the Act.

Secondly, Mr. Sengupta contends that in the fact of the present case there exists no relationship of employer and employee between the parties and as such no industrial dispute has arisen justifying reference.

4. It is now settled position of law that in making a reference u/s 10 of the Act, the appropriate Government does an administrative act and the fact that it has

to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative act. The Court cannot therefore canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi judicial determination. See *State of Madras Vs. C.P. Sarathy and Another*, .

5. Thus, there is very little scope of interference with such decision in this application under Article 226 of the Constitution of India. Moreover, the petitioner has already appeared and filed written statement. I thus find no substance in the first grievance of Mr. Sengupta.

6. As regards the other point that there exists no relationship of employer and employee between the parties and as such there is no industrial dispute, in my view, such point can be raised by the petitioner in the Tribunal itself and it is for the Tribunal to adjudicate such point on the basis of materials that will be placed before it.

7. Mr. Sengupta in this connection has placed before this Court a recent decision of the Apex Court in the case of *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, and has relied upon a sentence appearing in paragraph 27 thereof stating that the Tribunal cannot go into the question of the validity of reference. According to Mr. Sengupta, in view of such decision, there is doubt as to whether the Tribunal can adjudicate such question. Mr. Sengupta however frankly concedes that it has been already settled by the Apex Court in the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, that such point can be decided by the Tribunal.

8. After hearing the learned counsel for the parties and after going through those decisions, I am of the view that the decision of the Apex Court in the case of *National Engineering Industries Limited (supra)* is in no way in conflict with the one passed in *Express Newspapers Pvt. Ltd. (supra)*.

In the case of *National Engineering Industries Limited (supra)*, the State Government while making reference failed to give due consideration of the direction of the High Court passed in an earlier matter. The State Government also failed in its duty to bring to the notice of the High Court its notification dated March 17, 1989 making the impugned reference. Under such circumstances, the Apex Court was of the view that it was expected of the State Government to bring to the notice of the High Court before making reference to its decision to make reference. After the judgment had been announced and the direction issued by the High Court to hear the appellant, the Supreme Court proceeded, it was incumbent on the State Government to recall the reference. Therefore, in such circumstances, the Tribunal before whom such reference is sent had no authority to consider whether reference under such condition was justified and in such a context Supreme Court made the aforesaid observation in paragraph 27 of the judgment.

9. But when specific defence taken by the company is that there existed no relationship of employer and employee, it is for the Tribunal to decide such question after materials are placed before Tribunal. After all, the Tribunal is to come to a definite conclusion whether there existed any industrial dispute within the meaning of the Act. In the case of Express Newspapers Pvt. Ltd., the Apex Court specifically approved such course. Moreover, as pointed out by the Bench decision of the Apex Court consisting of five Judges in the case of the Madras State v. C.P. Sarathy (supra), it is always 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 therefore the Tribunal had no jurisdiction to make the award. Thus, the authority of the Tribunal to decide such preliminary fact as regard its own jurisdiction is beyond any doubt.

10. Therefore, the second point raised by Mr. Sengupta that there exists no relationship of employer and employee between the parties can be decided by the Tribunal and the decision of the Apex Court in the case of National Engineering Industries Limited (supra) does not stand in the way of adjudicating such dispute.

11. In view of what has been stated above, I thus find no reason to entertain this writ application and the writ application is thus disposed of with the above observation.

12. In the facts and circumstances there will be however no order as to costs.

13. Since the subject matters of the other 23 writ applications which were heard analogously with the present one are same, those matters are also disposed of in terms of the present order.