

(1965) 05 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2639 of 1965

Messrs Kalkaji Compressor Works

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 20-05-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1965) 05 P&H CK 0059

Hon'ble Judges : H.R. Khanna, J

Bench : Single Bench

Advocate : Anand Prakash and Mr. H.L. Sarin, for the Appellant; A.M. Suri, for Respondents 1 and 2 and Mr. G.S. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Khanna, J.—This is a petition under Articles 226 and 227 of the Constitution of India by Messrs Kalkaji Compressor Works owned by Messrs K.G. Khosla & Company (P) Limited, Faridabad, for quashing the following notification dated 27th August, 1965:

No. 429-SF-III-Lab.-1-65/23196.-Whereas the Governor of Punjab is of opinion that an Industrial dispute exists between the workmen and the management of Messrs Kalkaji Compressor Works, Mathura Road, Aurangpur (District Gurgaon), regarding the matter hereinafter appearing.

And whereas the Governor of Punjab considers it desirable to refer the dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of Industrial Disputes Act 1947, the Governor of Punjab hereby refers to the Industrial Tribunal, Punjab, Chandigarh, constituted u/s 7A of the said Act, the matter specified below being either matter in dispute, or matter relevant to or connected with the dispute as between the said management and the workmen for adjudication :

Whether the termination of services of Shri Hari Singh is justified and in order ?
If not, to what relief he is entitled to

(Sd) R.I.N. AHOOJA.. Secretary to Government, Punjab, Labour Department.

The respondents in the petition are the State of Punjab respondent No. 1. Shri K.L. Gosain, Industrial Tribunal Punjab respondent No. 2, Chaudhri Hari Singh respondent No. 3, Shri G.C. Joshi, General Secretary of the Indian National Trade Union Congress (hereinafter referred to as I.N.T.U.C.) Punjab, Himachal Pradesh, Jammu & Kashmir respondent No. 4, and K.G. Khosla Workers" Union (Registered) respondent No 5.

2. The petitioner Company is engaged in the manufacture of Air Compressors and other allied equipment, and its factory known as "Kalkaji Compressor Works" is situated on the way to Faridabad. Hari Singh respondent No. 3, who was an employee of the petitioner, was dismissed from service by the Factory Manager of the petitioner vide letter dated 4th August, 1962. Respondent No. 5 is the Union of Workmen of the factory, and as per letter dated 15th November, 1962 respondent No. 5 raised an industrial dispute with regard to the dismissal of Hari Singh respondent No. 3 and two others, namely, N.P. Garg and Hari Kishan, and claimed their reinstatement with full back wages and continuity of service The matter was taken up in conciliation and on 7th December, 1962, though there was a settlement of some other disputes no settlement could be arrived at regarding Hari Singh, Hari Kishan and N.P. Garg. An undated letter, copy of which is annexure "G" to the petition, was then sent to the Secretary, Labour Department Punjab, by one K.D. Kapil describing himself as Organizer of I.N.T.U.C. for and on behalf of K.G. Khosla Workers Union that the notice of demand regarding reinstatement of Hari Singh and Hari Kishan was withdrawn and was not to be pursued. Another undated letter to the same effect was sent by K.R. Gulshan who also described himself as Organizer of I.N.T.U.C. and authorised representative of workmen of Kalkaji Compressor Works. Thereafter the following letter was sent on 7th December, 1962 :

Receipt No 4652 dated 31st December, 1962. From K.G. Khosla Workers" Union, Faridabad.

To

The Conciliation Officer, Bhiwani

Labour Department, Government of Punjab, Chandigarh.

Notice of demand dated 15th November, 1962 served by K.G. Khosla Workers" Union upon Messrs Kalkaji Compressor Works (Proprietors of K.G. Khosla & Co., (P) Ltd) regarding reinstatement of Sarvshri Hari Singh, Hari Kishan and N.P. Garg. Dear Sir,

We hereby withdraw the notice of demand cited as subject, and therefore it may be filed in your office.

We further undertake not to raise any industrial dispute about the reinstatement of these two workers in future and also we do not press the case of Shri N.P. Garg for the present.

(Sd.) K.R. Gulshan,) Organisers INTUC,

(Sd.) K.D. Kapil) Faridabad & Authorised representatives of Workmen of Kalkaji Compressor Works.

Dated :

Copy to:

M/s Kalkaji Compressor Works, Village Aurangpur, Tehsil Ballabgarh, District Gurgaon.

It appears that representation was made that K.D. Kapil and K.R. Gulshan had no authority to withdraw the notice of demand in respect of the dismissal of Hari Singh respondent No. 3. Letter dated 28th December, 1964 was addressed by Kesar Singh, General Secretary of K.G. Khosla Workers' Union respondent No. 5 to the Labour Minister, Punjab, to the effect that there had been no valid withdrawal of the demand notice because the authority to withdraw only lay with the President and General Secretary of the Union. Prayer was made that the matter be referred for adjudication to the Industrial Tribunal, Punjab. Letter dated January 11, 1965 was also addressed by respondent No. 4, General Secretary of I.N.T.U.C. to the Labour Minister, Punjab, for referring the matter in respect of Hari Singh and N.P. Garg to Industrial Tribunal, Punjab. In the meantime, memorandum dated 14th December, 1964 was sent by the Joint Labour Commissioner, Punjab, to the petitioner along with a copy of letter addressed by Hari Singh respondent No. 3, asking the petitioner to appear before the joint Labour Commissioner, Punjab, on 9th December, 1964. The petitioner was also asked to meet Shri Rizk Ram, Labour Minister, Punjab, at Chandigarh. The petitioner, accordingly, met the Labour Minister, Punjab on March 2, 1965 and maintained that no industrial dispute existed between the parties and that the demand notice having been withdrawn the matter could not be reopened. The Punjab Government thereupon issued the impugned notification for referring the dispute to the Industrial Tribunal. The petitioner has assailed the notification on the ground that it was issued mala fide. Another ground taken by the petitioner is that the notice of demand having been withdrawn by Kapil and Gulshan, there survived no dispute and the same could not be referred for adjudicator, to the Industrial Tribunal.

3. The petition has been resisted by the respondents. The stand taken on behalf of the respondents is that the State Government acts administratively in making a reference of an industrial dispute to an Industrial Tribunal, and its decision in this respect is not liable to be called in question. The allegation that there had been a valid withdrawal of the notice of demand, has been denied. Likewise, the allegation that the deference of the dispute to the Industrial Tribunal was made

mala fide, has been denied. Shri Rizk Ram, Minister, Government of Punjab has also filed his affidavit in the course of which he has denied that he acted mala fide or illegally. According to him he called the parties in good faith in order to afford full opportunity to the parties before passing final order. The allegation that the reference to the Tribunal was made under pressure from someone, has also been denied.

4. I have heard Dr. Anand Parkash on behalf of the petitioner and Mr. Suri and Mr. Chawla on behalf of the respondents. The learned counsel for the petitioner has argued that K.D. Kapil and K.R. Gulshan validity withdrew the notice of demand, and in the face of that withdrawal the Punjab Government acted illegally in making the reference of the dispute to the Industrial Tribunal. The reference, it is further stated, was made mala fide As against that, the learned counsel for the respondents have reiterated the stand taken on behalf of the respondents in their written statements and affidavits.

5. After giving the matter my earnest consideration I am of the view that the present petition is liable to be dismissed and the impugned notification is not liable to be quashed. As would appear from the resume of facts given above, the first question, which needs determination, is whether K.D. Kapil and K.R. Gulshan were authorised to withdraw the notice of demand. In this connection " find that section 38 of the Industrial Disputes Act, 1947, deals with the representation of parties who are involved in an industrial dispute. Sub-section (1) of that section makes provision for representation of a workman who is a party to a dispute, and reads as under:

36 (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

- (a) an officer of a registered trade union of which he is a member;
- (b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;
- (c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

Hari Singh respondent No. 3 was admittedly a member of a registered trade union and as such his case would be covered by clauses (a) and (b) and not by clause (c) reproduced above. K.D. Kapil and K.R. Gulshan could claim a right of representation on behalf of Hari Singh if they could be shown to be officers of respondent No 5, which was the registered trade union of which Hari Singh was the Member, or of the Indian National Trade Union Congress to which respondent No. 5 is stated to have been affiliated. There is however, no material on the record to show that Kapil and Gulshan were the officers of either the registered trade union or of I.N.T.U.C. The petitioner in the heading of the petition admits

that Kesar Singh is the General Secretary of the registered trade union respondent No. 5 and the affidavit on page 103 of the file, of Kesar Singh shows that he and Dalip Singh were respectively the General Secretary and President of the registered trade union respondent No. 5 on 31st December, 1962 and also on the date of the filing of the affidavits. The reply filed on behalf of the State of Punjab shows that Kapil and Gulshan were not the President and General Secretary of the above-mentioned Union. In the absence of any material to show that Kapil and Gulshan held an office in the trade union or in the I.N.T.U.C., it cannot be said that they had the right of representation under clauses (a) and (b) of sub-section (1) of section 36 reproduced above.

8. Reference has been made on behalf of the petitioner to the fact that Kapil and Gulshan described the selves as organizers of the I.N.T.U.C. In this respect I find that the written statemant of respondent No. 4 G.C. Joshi, General Secretary of I.N.T.U.C. which is supported by his affidavit, shows that Kapil and Gulshan were not the organizers of the I.N.T.U.C. Apart from that, I am of the view that the words "officer of a registered trade union or a federation of trade unions" convey the idea of a President, Secretary or other office bearer of the trade union or federation. The word "organizer" is rather vague and does not connote any definite office unless there be some express provision in the Constitution of a union or a federation for that office of which there is no proof in the present case. It cannot, therefore, be held on the material on record that Kapil and Gulshan were authorised to act under clauses (a) and (b) of sub section (1) of section 36 of the Act, on behalf of Hari Singh respondent No. 3.

9. Reference has then been made to a letter of authority which was executed in connection with the notice of demand on behalf of the workmen of the petitioner's factory. This letter of authority was in form "F" as contemplated by rule 36 of the Industrial Disputes (Punjab) Rules 1958. Although this letter of authority has not been placed on the file but at the instance of the learned counsel for the petitioner I have perused it in the file produced on behalf of respondent No 1 at the time of the hearing of the petition. This letter of authority is in favour of Kapil, Garg and Babu Lal, and though signed by a number of other workmen, it is not signed by Hari Singh. Although Kapil and Garg were described as General Secretary and President in this letter, yet this description was, as would appear from the material on record discussed above, incorrect. Perusal of this letter of authority shows that there was no power given to the three persons in whose favour the letter of authority was issued to withdraw the notice of demand. The letter of authority is not very happily worded, but its general tenor goes to show that Kapil, Garg and Babu Lal were to act collectively and not individually. Admittedly Garg and Babu Lal did not join in withdrawing the notice of demand. As such Kapil by himself could not withdraw the notice of demand, more so when there was no express power of withdrawal in the letter of authority.

10. According to rule 58, as amended in September, 1962, the settlement arrived at in the course of conciliation proceedings in the case of workmen shall be

signed by-

- (i) the President and Secretary of a Trade Union of workmen; or
- (ii) the President, Vice-President, Secretary or General Secretary of the Trade Union of workmen and a workman (Preferably one of the aggrieved workmen); or
- (iii) five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

Admittedly the notice of demand was not withdrawn by any of the persons mentioned above and as such the withdrawal in the very nature of things should be held to be not in accordance with law. Dr. Anand Parkash on behalf of the petitioner has argued that rule 53 deals with the settlement of a dispute, and though for the settlement it is imperative that the persons mentioned in rule 8 should sign the settlement on behalf of the workmen, it is not essential that those persons should also append their signatures when withdrawing a notice of demand. This contention, in my opinion, cannot be accepted, because the withdrawal of a notice of demand is, if anything, a more serious matter than the settlement of dispute. Settlement normally implies some give and take, while withdrawal results in the giving up of the entire claim, and as such the safeguards provided by sub-rule (2) of rule 58 regarding the signatures of specified persons in case of settlement, in my view, would have to be equally complied with in case of withdrawal as they have to be in the case of settlement. As there has been infraction of the provisions of rule 58, it cannot be said that there was a valid withdrawal of the notice of demand by Kapil and Gulshan.

9. Reference has been made on behalf of the petitioner to section 237 of the Contract Act which deals with the liability of principal inducing belief that agent's unauthorised acts were authorised by him. The aforesaid section can, in my opinion, be of no assistance to the petitioner because there is no material on the present record to indicate that either Hari Singh or the Union by words and conduct induced the petitioner to believe that Kapil and Gulshan in withdrawing the reference were acting within the scope of their authority.

10. According to section 10 of the Industrial Disputes Act where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute for adjudication to an Industrial Tribunal or to some other specified authority as the case may be. Perusal of that section goes to show that the Government in referring the dispute to a Tribunal for adjudication acts on its subjective satisfaction. As the satisfaction contemplated by the section is of the Government, this Court in a petition under articles 226 and 227 of the Constitution cannot sit as a Court of Appeal and hold that even though the Government is satisfied about the necessity for referring the dispute for adjudication to a Tribunal it should not have been so satisfied. The order of the Government in this respect being essentially an administrative order is not subject to judicial review. I may in this connection refer to the case of *State of Madras Vs. C.P. Sarathy and Another*, .

Patanjali Sastri C.J., speaking for the Court observed as under:

But, it must be remembered that in making a reference u/s 10(1) the Government is doing 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 in character. 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. No doubt, it will be 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 that, therefore, the Tribunal had no jurisdiction to make the award. But. if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

11. So far as the allegation of mala fide is concerned, I find that the same has not been substantiated. There is no material on the record to indicate that the Government was actuated by any ulterior motive in making the reference. The fact that the Labour Minister called the parties before making the reference, would not indicate that he acted mala fide. The affidavit of Shri Rizk Ram, Labour Minister, shows, as stated above, that he called the parties in good faith to afford full opportunity to them to state their case before deciding the matter. It is not at all possible to spell out an inference of mala fide from the above fact; on the contrary it would point to the conclusion that the Minister wanted to act fairly and in accordance with the rules of natural justice.

The fact that reference has been made after some delay would also not go to show that the reference is mala fide. This may perhaps be a matter which might be agitated before the Tribunal in the context of the claim for reinstatement of Hari Singh, but I fail to understand as to how the delay in making the reference can go to show that the reference was made mala fide.

12. The petition, consequently, fails and is dismissed but, in the circumstances, I leave the parties to bear their own costs.