

(1994) 11 AHC CK 0106
In the Allahabad High Court
Case No : C.M.W.P. No. 51 of 1993

Metitec India Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 3, 3A, 4K, 6(T), 6S

Citation : (1995) 70 FLR 624 : (1996) 1 LLJ 23 : (1995) 1 UPLBEC 305

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : J.N. Tiwari and Rakesh Tiwari, K.P. Agrawal, for the Appellant; S.P. Maurya, for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu, J.—In this writ petition the petitioner has challenged the Order No. 7012-17 (Shra As)/36-Shram (1) Swatah Sandarbh 2(27)/92 (Ghaziabad) dated September 5, 1992 passed by the State of U.P. making the following reference for adjudication before the Industrial Tribunal (V) Meerut:-

Matter of dispute

"Whether the act of the employers concerning 241 workers named in the annexure in declaring lock-out from May 10, 1992 was unjustified and/or illegal? If yes, men to what relief or order are those workers entitled to and with what other benefits?

2. It may be mentioned here that receiving the aforesaid Reference the Industrial Tribunal concerned registered it as Adjudication case No. 138 of 1992 and commenced proceedings in which the petitioner and the opposite party No. 3 namely, All India Engineering & General Mazdoor Union were shown as parties. On receiving notice, the petitioner has rushed to this Court under Article 226 of the Constitution of India in the form of the present writ petition challenging the said reference which has been made u/s 4-K of U.P. Industrial Tribunal Act, 1947,

hereinafter referred to as the Act.

3. Sri J.N.Tiwari, learned Senior Advocate, assisted by Sri Rakesh Tiwari, learned counsel for the petitioner have been heard at length in support of this writ petition. Sri K.P. Agrawal has espoused the cause of the Union while Sri S.P. Maurya has argued the matter on behalf of the State of U.P., though no counter affidavit was filed by the State.

4. Learned counsel has advanced two arguments in support of this writ petition challenging the Reference. First, the reference is bad in law as also on facts because the said reference is colourable exercise of power inasmuch as the preceding strike by the workers in the factory has not been referred to the Tribunal for adjudication and, therefore, the petitioner will suffer irreparably if the reference is permitted to go on as its. Second, there was no material before the State Government on the basis of which it could form opinion about the existence of industrial dispute and, therefore it had no right to refer the same for adjudication.

5. Apart from some case laws cited by learned counsel for the petitioner, reliance was also placed on the provisions contained in Sections 6-T(2) and 6-S of the Act. On behalf of the respondents it was said that in view of the facts involved in the present case the State had ample material before it to refer the matter for adjudication before the Tribunal and the language of reference is not at all such as to debar the petitioner from raising the question of strike by the workers if they want to do so by way of defence.

6. The undisputed relevant dates relating to the different events are as follows:

- (1). May 16, 1992 workers resorted to strike.
- (2). May 18, 1992 lock-out declared by Management (Petitioner)
- (3). August 5, 1992 announcement regarding the closure of the Mill
- (4). August 6, 1992 Mill was actually closed down.
- (5). August 13, 1992 State Govt. passed an order u/s 3-A of the Act prohibiting lock-out for a period of 90 days.
- (6). September 5, 1992 Reference to the Tribunal as noted above.

7. On the own showing of the parties the State Government was having material before it sufficient to pass an order u/s 3 of the Act prohibiting lock-out for a period of 90 days. Therefore, there was already enough material before the State Government that an industrial dispute was pending between the employers and the workmen. It may be noted that Section 2(1) of the Act defines "Industrial dispute" meaning any dispute or difference between employers and the workmen connected with the employment or conditions of labour of any person. Therefore, when the State Government had taken steps to pass the orders u/s 3-A of the Act it was already seized of the matter and had material before it regarding the

impending industrial dispute in the factory of the petitioner. According to the petitioner's own case Section 3-A of the Act empowers the State Government to direct any person to carry on the trade or business on the application of the stipulated number of workmen made to the State Government. The said section further provides that such an action could have been taken when the State Government was informed that an undertaking, trade or business has closed or was likely to be closed.

8. It is thus no more open to doubt that there was enough material before the State Government to pass the order of making a reference because it had already material enough to pass the order u/s 3-A of the Act. Therefore the second point sought to be made out on behalf of the petitioner is without any basis and rather contrary to the facts.

9. Coming to the first point, emphasis was laid on the language used in Section 6-S and 6-T of the Act. Section 6-S provides that no person employed in an industrial establishment shall go on strike when contingencies mentioned in Clauses (a) to (f) of Sub-section (1) exist. Likewise, Sub-section (2) of Section 6-S provides that no employer shall lock-out any of his workmen without complying with the provisions contained in Clauses (a) to (f) thereof. Sub-sections 3,4,5 and 6 of Section 6-S make additional provisions for declaring strikes and lock-out illegal.

10. Greater emphasis was laid on the language used in Section 6- T of the Act which, for ready reference is quoted below;

"(1) A strike or lock-out shall be illegal if it is commenced or declared in contravention of Section 6-S or is continued beyond the date on which the industrial dispute to which the strike or, as the case may be, the lock-out relates, is taken up by a Board or is referred for adjudication to a Labour Court or Tribunal.

(2) A strike declared in consequence of an illegal lock-out or a lock-out declared in consequence of an illegal strike in an industrial establishment shall not be deemed to be illegal."

11. Reliance was also placed on J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur, . It has been held in the said case that the only point of requiring pleadings and issues is to ascertain the real dispute between the parties, to narrow the area of conflict and to see just where the two sides differ. It is not open to the Tribunals to fly off at a tangent and disregarding the pleadings, to reach any conclusion that they think are just and proper. It may be mentioned here that the Award of the Tribunal was challenged in the said case when those observations were made. There is absolutely no quarrel that every word of the aforesaid law of the Supreme Court has to be applied by the Tribunal. But the ruling does not help the petitioner at all because in the case "reference" has only been made and no evidence has yet been recorded.

12. It may be mentioned here that the Hon"ble Supreme Court has held in the case of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, that where the terms of reference raise issue about legality and justification of strike and lock-out in particular mill on a particular date, (he Tribunal must confine its decision only to question whether strike and lock-out was legal and justified or not. It could not enlarge scope of its jurisdiction and decide that there was no strike or lock-out at all. It was further held that the tribunal could, however, decide that dispute referred to was not industrial dispute at all. Therefore, in view of the provisions contained in Section 6-T as noted above it is always possible for the Management or the workmen to plead legality of either of the actions, i.e. going for strike or lock-out when either the strike or the lock-out is the subject matter of the enquiry under reference to it by the State Government.

13. Chronological development of the events noted above leave no room for doubt that the petitioner declared lock-out after the State Government had issued the order dated August 13, 1992 u/s 3-A of the Act asking the petitioner not to declare lock- out for a period of 90 days. Therefore, on the day of reference it was fully within the powers of the State Government to make reference for adjudication regarding the lock-out which was declared by the petitioner in the teeth of the order u/s 3-A of the Act. Consequently there is no illegality whatsoever in the reference made by the State Government.

14. Before parting with the case it may be mentioned here that an ancillary argument was advanced that since no conciliation proceedings had taken place and the opposite party No. 3 had not come to be recognised as a party in the present dispute, it was not open to the State Government to make opposite party No. 3 an intervener in the reference by nominating it as such. There is absolutely no warrant for this argument for the simple reason that the State Government was already seized with the matter in connection with passing orders u/s 3-A of the Act prohibiting the petitioner to declare lock-out. Therefore, opposite party No. 3 was rightly mentioned as the Union concerned which had represented the cause of the workmen.

15. Reliance was placed by the learned counsel for the petitioner on the decision reported in 1994 L.I.C. 1486, 1956 F.J.R. 389 and 1981 L.I.C. 1110. The first two cases are decisions rendered by Orissa and Calcutta High Courts where the provisions akin to Section 6-S and 6-T do not appear to have been in existence. So far as the third case is concerned in it the Supreme Court has only reiterated that the Tribunals can not go beyond the terms of the reference, with which proposition there is absolutely no quarrel.

16. No other point has been argued.

The writ petition accordingly fails and is dismissed. Interim order dated April 12, 1993 is vacated. On the facts and circumstances of the case, parties will bear their own costs.