
(1996) 12 DEL CK 0055

In the Delhi High Court

Case No : L.P.A. No's. 269 and 270 of 1996

Moolchand Khairati Ram Hospital Karamchari Union

APPELLANT

Vs

Labour Commissioner and Another

RESPONDENT

Date of Decision : 02-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1998) 3 LLJ 1

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Ashok Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C. J.

1. Exemption granted.

Two appeals have been preferred against the common judgment of the learned single Judge by which C.W.P. 1009/95 was allowed and C.W.P. 2454/95 filed by the workmen was dismissed. The writ petition C.W.P.2454/95 was dismissed consequent to the allowing of C.W.P. 1009/95 filed by the management.

2. This is a case in which the Government referred the following question to the Industrial Tribunal :-

"Whether the workmen shown in Annexure "A" are entitled to wages for the lock-out period w.e.f. February II, 1995 and, if so, what directions are necessary in this subject?"

The management of the hospital filed C.W.P. 1009/95 for quashing the reference on the ground that the real dispute between the management and the workmen, namely, was whether there was at all a lock-out and that question was unfortunately not referred is, Therefore, liable to be quashed. In other words, the

management contended that from the manner in which the question for reference was framed and referred to the Industrial Tribunal, it appeared that the existence of a lock-out was presumed. According to the management, there was no lockout and this was borne out by the contentions raised by them before the Government.

3. The learned single Judge went into the question as to whether the Government took into consideration all relevant facts and circumstances for the purpose of passing an administrative order referring the disputes to the Industrial Tribunal; or whether the Government had omitted to consider the relevant material which was before it and failed to make a reference in respect of the real dispute between the parties.

4. Learned single Judge referred to various decisions of the Supreme Court, including the one of Prem Kakar Vs. State of Haryana and Another, and also to the Full Bench Judgment of this Court in I.T.D.C. v. Delhi Administration 1982 LIC 1309 and concluded that the Labour Commissioner while making the reference did not consider vital material placed before him on behalf of the management, namely:

(i) Appeal dated February 11, 1995 issued by Mr. Jagat Ram, President of the Workers Union;

(ii) Reply dated February 16, 1995 sent by the management to the Assistant Labour Commissioner pursuant to his letter dated February 15, 1995.

(iii) Letter dated February 25, 1995 sent by the management in reply to the letter dated February 22, 1995 received from the Conciliation Officer.

5. On the basis of the above reasoning the learned single Judge came to the conclusion that the dispute actually referred was not the dispute between the parties and that in fact the management had disputed the very existence of the lockout. On that basis a Writ of Certificate was issued quashing the reference.

6. Learned counsel for the appellant workmen has contended before us that it was not open to the High Court in exercise of jurisdiction under Article 226 of the Constitution of India to quash a reference by holding that the relevant material placed before the Government was not considered and the real dispute between the parties had not been referred to the Industrial Tribunal.

7. We are unable to accept this contention. In our view, the High Court can go into the validity of the reference in certain situations. The decision of the Supreme Court in Prem Kakkar v. State of Haryana & Anr. (supra) in fact goes against this contention of the appellant's counsel, (his decision of the Supreme Court was noticed in para 27 of the Judgment of the learned single Judge). Relevant portion of the Judgment of the Supreme Court reads as follows :

"In entertaining an application for a writ of mandamus against an order made by the appropriate Government u/s 10(1) read with Section 12(5) of the Act the

Court does not sit in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign, then the Court may in a given case consider the case for a writ of mandamus."

From the above passage, it is clear that if it appears to the High Court that the appropriate Government took into account any irrelevant or foreign matter into consideration a writ of mandamus has to be issued. On the same analogy, if relevant material, which was placed before the Government, was not taken into account at the time of making of reference.

8. Learned counsel then sought to distinguish the above Judgment on the ground that the reference in that case before the Supreme Court was u/s 12 and not u/s 10. In our view, that would not make any difference. If administrative orders can be quashed on the ground of non-consideration of relevant material, it does not matter whether it is an order passed u/s 10(1) of the Industrial Disputes Act or u/s 12(5) of the said Act.

9. In fact, the Full Bench decision of this Court in *I.T.D.C. v. Delhi Administration and Ors.* (supra) which was relied upon by the learned Single Judge, had dealt with the matter squarely, and the relevant portion of the judgment reads as follows :-

"It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference. An Industrial Adjudicator constituted under the Act is not vested with any inherent power or jurisdiction. It exercises such jurisdiction and power only upon and under order of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function but even that is amenable to judicial review in the proceedings under Article 226 under certain facts and circumstances. An order of reference is open to judicial review, if it is shown that the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. The whole correspondence between the management and the Labour Commissioner, the Union of the workmen and the Labour Commissioner and the notices displayed by the management (the substance of which had been reproduced above) were before the Secretary (Labour) Delhi Administration when it passed the order of reference dated April 27, 1981. We are of the view that the existence of lock-out itself being the real dispute between the management and its workmen, the term of reference proceeds on the assumption that there was lock-out with effect from January 1, 1981."

10. In the said Full Bench decision the reference was quashed on the ground that the real question, namely, the existence of the lockout, was not referred.

Learned counsel for the appellant, however, invited our attention to certain other observations of the Full Bench in the same case in page 1328. They read as follows :

"The Industrial Tribunal cannot go into that question as the real question has not been made the subject matter of the order of reference. The very basis of the order of reference is the period of lock-out with effect from January 1, 1981 for a dispute regarding the entitlement of wages. It would not be open to the management to contend that the foundation of the dispute mentioned in the order of reference was not existing. The management would be debarred to contend that the true nature of the dispute was something different than that contained in the order of reference. Counsel for the respondents made a concession during the hearing that the dispute whether it was a closure or lockout could be investigated by the Industrial Tribunal and no objection would be raised that it was not within the scope of reference. Such a course could not be adopted. It may be open to the Industrial Tribunal to find out the exact nature of the dispute from the pleadings of the parties and other material but the Industrial Tribunal could not enlarge the scope of the jurisdiction on concession and decide that there was a closure and no lock-out, that would be. deciding the foundation of the dispute mentioned in the order of reference. Such a jurisdiction is not vested in the , Industrial Tribunal."

This latter passage in the Full Bench decision on which reliance has been placed by the learned counsel for the appellant, in our view, deals with a different question, namely, as to jurisdiction of the Industrial Tribunal and it does not deal with the jurisdiction of the High Court under Article 226 of the Constitution of India. The question of the jurisdiction of the High Court under the Article 226 is dealt with in the earlier passage of the Full Bench decision referred to by us which has been extracted above. In other words, it was there held that it was open to the High Court to go into the validity of the reference, though it was not open to the Industrial Tribunal to go into that question. Inasmuch as in the present case, the management has approached the High Court for quashing the reference, the earlier extract from the Full Bench Judgment referred to above, which has been relied upon by the learned single Judge is the more appropriate one. That part of the Full Bench Judgment is binding on us. Following the same, we hold that the learned single Judge was right in quashing the reference.

11. Learned counsel for the appellant then placed reliance upon another Judgment of the Supreme Court in *State of Madras v. C.P. Sarathy and Anr.* 1953 I LLJ 74. In that case Patanjali Sastri, C.J. made observations to the effect "that the Court cannot 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, 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 these matters."

12. The above passage, in our view, cannot help the appellant. In that case, the limited dispute before the Supreme Court was whether there was at all material before the Government to make a reference of a dispute in very general terms. In fact, the reference dated May 20, 1947 in that case, as set out in *State of Madras Vs. C.P. Sarathy and Another*, reads as follows :

"Whereas an industrial dispute has arisen between the workers and managements of the cinema talkies in the Madras City in respect of certain matters;

And whereas in the opinion of His Excellency the Governor of Madras, it is necessary to refer the said industrial dispute for adjudication;

Now, Therefore, in exercise of the powers conferred by Section 7(1) and (2) read with Section 10(1)(c) of the Industrial Disputes Act, 1947, His Excellency the Governor of Madras hereby constitutes an Industrial Tribunal consisting of one person, namely, Sri Diwan Bahadur K.S. Ramaswami Sastri, Retired District and Sessions Judge, and directs that the said industrial dispute be referred to that Tribunal for adjudication.

The Industrial Tribunal may, in its discretion, settle the issues in the light of a preliminary enquiry which it may hold for the purpose and thereafter adjudicate on the said industrial dispute.

The Commissioner of Labour is requested to send copies of the order to the managements of cinema talkies concerned."

It was contended in that case that the reference was vague and did not specify the actual dispute between the parties and, Therefore, it was bad. The Supreme Court, Therefore, went into the question and held that where the Government was satisfied that there was in existence an industrial dispute, and this decision was arrived at on the basis of material placed before the Government, it was not open to the High Court to hold that there was no such industrial dispute existing between the parties.

The above observation of the Supreme Court was made in the context and that decision does not deal with the question whether under Article 226, the High Court is precluded from quashing a reference on the ground that the real dispute was not referred by the Government to the Tribunal. In fact, the decision of the Supreme Court in *Prem Kakkar's case* (supra), supports the view taken up by the Full Bench of this Court.

13. For the aforesaid reasons, the LPA 269 of 1996 preferred by the workmen against the quashing of the reference is dismissed.

14. Learned counsel for the appellant agrees that the connected appeal, LPA 270

of 1996 depends upon the result of LPA 269/96 filed against the Judgment in C.W.P. 1009/95. In fact in C.W.P. 2454/95 the prayer was for quashing the charge sheets and suspension of workmen etc. For the aforesaid reasons, LPA 270/96 preferred by the workmen against the dismissal of C.W.P. 2454/95 is also dismissed.