
(1996) 10 DEL CK 0030

In the Delhi High Court

Case No : C.M.W.P. No. 1009 of 1995 and C.W.P. No. 2454 of 1995

Moolchand Kharati Ram Hospital and Ayurvedic Research
Institute

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Citation : (1997) 75 FLR 266 : (1998) 3 LLJ 1139

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : S.N. Bhandari and Dalip Mehra, for the Appellant; Manmohan and R.K. Saini, for the Respondent

Final Decision : Allowed

Judgement

Dalveer Bhandari, J.—The facts mentioned in both the petitions are interconnected. Therefore, both the aforementioned writ petitions are being disposed of by this judgment.

2. In C.W.P. No. 1009/1995, the petitioner Moolchand Kharati Ram Hospital & Ayurvedic Research Institute, for short, the Management has preferred the writ petition with the prayer for quashing the order issued by the Labour Commissioner/Secretary Labour (Annexure-1) by which reference was made to the Industrial Tribunal:

"TERMS OF REFERENCE"

"Whether the work-men shown in Annexure "A" are entitled to wages for the lock-out period w.e.f. February 11, 1995 and, if so, what directions are necessary in this respect?"

3. In this order, the Secretary Labour has arrived at a conclusion that lock-out has been resorted to by Management w.e.f. February 11, 1995 and prohibited the Management from continuance of lock-out forthwith in respect of the

workmen of the Hospital.

4. The Writ Petition No. 2454/1995 has been filed by the workers of the Hospital in which direction has been sought to quash the charge sheet/ suspension orders passed against the workers mentioned in list marked as Annexure-A. It is also prayed that the Management be restrained from proceeding further with the inquiry/disciplinary proceedings against the workers on the ground of participation in the alleged strike.

5. The brief facts which are necessary to dispose of the aforementioned writ petitions are recapitulated as under:

6. The petitioner hospital is one of the prestigious hospitals of the National Capital Territory of Delhi and has been functioning for the last 50 years.

7. There has been a dispute between the management and workmen of the petitioner Hospital for sometime. The Management filed a civil suit against the respondent workmen in a civil Court and obtained an injunction on January 2, 1995 prohibiting the workmen from holding their trade union meetings, within the Hospital premises. On January 8, 1995, the workers union wrote a letter to the Labour Commissioner bringing to his notice the violation of memorandum of settlement by the Management. In this letter, it was stated that the employees were being victimised with mala fide intentions and further their services were being terminated/suspended on flimsy and false grounds.

8. On February 11, 1995, one member of the supervisory staff Ms. Tilakmma Nair was suspended from duty, on account of gross negligence in her duties. The case of the Management is that all the employees of the Hospital struck work from 1 P.M. on February 11, 1995 without notice, leaving all the patients, including those under critical care totally unattended and the employees had gone on strike.

9. On February 11, 1995 itself, the President of INTUC with whom the Union of employees of the Hospital is affiliated, wrote to the management a letter protesting against the suspension of Ms. Tilakamma Nair and informing the management that for that reason, the employees have withdrawn from work. The petitioner management has placed on record Annexure-4, the appeal which was issued by Jagat Ram, President of, the Workers' Union. The appeal reads as under:

"Those members of the Union who have not yet joined our movement are requested to cooperate with us by coming out after finishing all their differences. Their membership is intact and it is their obligation to welcome the steps taken against exploitation and express their commitment".

10. It is mentioned in the petition that strike was resorted to by the workers without giving notice as required. It is mentioned that a strike was resorted to against the suspension of Ms. Nair, who herself is not a workman. The management displayed their first notice on February 11, 1996 and continued to

display notices everyday thereafter repeatedly asking the workmen to call off the strike and report for work. Copies of the notices have also been annexed with the petition. 1 The management repeatedly informed the Department of Labour Delhi that the workmen were on illegal strike and they should be persuaded to call off the strike and report for work.

11. On February 15, 1995, a letter from the Assistant Labour Commissioner was received by the management asking them to appear before the Deputy Labour Commissioner on February 16, 1995. A reply to this letter was sent on February 16, 1995 itself stating that the employees were on illegal strike and requested the Assistant Labour Commissioner to advise the Union's representatives to call off the strike and report for work. The management also apprised the Dy. Labour Commissioner that the employee who was suspended for gross misconduct was not a workman within the meaning of Section 2 as per the provisions of the Industrial Disputes Act, 1947. The management's representative advisedly did not personally go to attend the meeting of February 16, 1995 apprehending manhandling by the striking workers. It is further mentioned that on February 17, 1995, the management received another letter from the office of the Assistant Labour Commissioner alleging that neither anybody appeared on behalf of the management in response to the earlier notice of meeting nor any reply was sent. Pursuant to the letter dated February 17, 1995, the Manager (Administration) of the hospital met the Deputy Labour Commissioner and apprised him of the true and correct facts of the case.

12. On February 21, 1995 Mr. N.L. Kanojia, Labour Officer came to the hospital along with two more officials of the Labour Department and met the Manager (Admn.) of the petitioner. The Manager (Admn.) again apprised the officers of the facts and requested them to advise the striking employees to call off their illegal and unjustified strike. Labour officer was also shown various notices which were displayed by the management requesting the workmen to call off their illegal and unjustified strike.

13. On February 22, 1995, the management received another letter from the Conciliation officer requiring the management to show cause as to why proceedings may not be initiated against them for prohibiting the continuance of lock-out by the management. Upon receipt of the show cause notice, LCO vide their letter dated February 25, 1995, in which it is mentioned that it is really a case of illegal strike and not of lock-out and the workmen stated that illegal strikers should be asked to call off their strike and resume their duties.

14. On receipt of order of reference, and also prohibitory orders dated March 7, 1995, the management immediately displayed a notice for information of the striking employees that the management never resorted to lock-out and assuming if any semblance of lock out was there, it has been prohibited by the Secretary and requested the employees to report for work/ attendance. The management vide its letter dated March 8, 1995 wrote to the Secretary (Labour) that the alleged terms of reference and prohibitory orders were bad in law and

were devoid of facts. It is mentioned that no lock-out was ever declared by the management and employees were on illegal strike.

15. According to the employees, on February 11, 1995, the petitioner illegally declared a lockout w.e.f. February 11, 1995 and did not allow the workers to perform their work to justify the said lock-out. The Management fabricated false story of strike by the workers w.e.f. February 11, 1995. On February 12, 1995, the Hospital Workers' Union wrote a letter to the Medical Superintendent with a copy to the Labour Commissioner pointing out that the branding of continuous employees reaction, during lunch hours as a strike was false and mala fide. On February 15, 1995, the Labour Commissioner asked the Management to appear on February 16, 1995 so as to resolve the matter by mutual negotiations. The Management did not appear at the hearing on February 16, 1995 but merely sent a reply to the notice sent by the Labour Commissioner, in which they mentioned that they have apprehension of assault by the Union. Therefore, they expressed, inability to appear. On February 17, 1995, the Labour Commissioner asked the Management to again appear on February 20, 1995. The notice was received by the Management on February 18, 1995. Again, no one appeared on February 20, 1995.

16. On February 21, 1995, a team of officers from the Labour Department visited that hospital to resolve the dispute. The Labour Officer asked the Management's representatives whether the Management was ready to take back all the workmen who were present in the morning shift as well as on the duty roster on February 11, 1995, without any condition? The Management representative informed that the management is not ready to take back all the workmen who were on duty on February 11, 1995, even though all the workmen were ready to resume their duty without any condition.

17. On February 22, 1995, a show cause notice was issued by the Labour Department asking the Management as to why the lock-out should not be prohibited. The Management was asked to respond within 3 days. The Management wrote a letter to the Labour Department on the same day reiterating that the workmen were on strike and the Management had never refused any workman who was ready and willing to resume duty. It was mentioned in the letter that "the Management is also displaying various notices advising the employees to call off their illegal strike and resume their duties. It is also mentioned that cases of those workmen who have been kept under suspension shall be dealt as per the law. It may be pertinent to mention that as on February 22, 1995, only 7 workers were under suspension. Out of them, one Om Pal was suspended in December, 1994. On February 25, 1995, the Management had sent a detailed reply to the show cause notice and mentioned that the Management, as may be evident from the perusal of various notices and circulars has already shown its willingness and has always been requesting the employees to call off their strike and resume the duties and work in discipline. It is submitted that in the light of the above, it can be safely concluded that the

Management has not declared any lock-out.

18. On March 7, 1995, the Labour Department issued a reference order referring the issue as to whether the workmen were entitled to wages for the lock-out period? The Labour Secretary also issued a prohibitory order u/s 10(3) prohibiting the continuance of the lock-out forthwith in respect of workmen of the petitioner Hospital.

19. The short question which really arises for consideration in the petition filed by the management is whether in the facts and circumstances of this case, it was a case of workers going on a strike or lock-out by the Management. In view of this controversy whether the reference issued by the Commissioner, Labour was based on the relevant material on record or not?

20. The petitioner Management has strengthened its submission by reference to a letter dated February 11, 1995 sent by the President of INTUC with whom employees Union is affiliated. In this letter, the President of the INTUC wrote to the Director of the Hospital explaining him as to why the employees have withdrawn the work and suggested remedies. It is also mentioned that if suspension order is not revoked within 48 hours, the Union may be compelled to serve appropriate notice for cessation of work as required under the law. A reference has also been made to a letter dated February 16, 1995 sent to Mr. K.R. Sawhney, Deputy Labour Commissioner suggesting that "It will be proper that your goodself may advise the Union's representative that the workmen may call off the illegal strike and report for work unconditionally."

21. It is alleged that the Management had sent a notice on February 28, 1995 and para No. 2 of the notice is translated into the following words:

"2. Due to the illegal strike, continuity of service of the employees will be disturbed and their seniority will adversely affect their seniority."

22. It is also mentioned in the petition that the petitioner Management has been advising the strikers to join work. It is alleged by the petitioner that the Government instead of asking the strikers to call off the strike threatened the petitioner Management of legal action, if suspended or terminated employees were not allowed to join duty. The petitioner Management filed a writ petition which came up for hearing on March 27, 1995. This Court issued notice. Mr. Pai, Senior Advocate who appeared in this case made a categorical statement before this Court. "Mr. Pai also makes a statement that the workers who are willing to join, can join work. In the statement, no distinction was made between suspended, workers and other workers. Reply to show cause has been filed by the workmen and by the Labour Commissioner. In the counter-affidavit, the Labour Union stated that it was a case of lock-out by the Management and not a strike by the workers" union. The Workers" Union supported the stand of the Labour Commissioner and mentioned that the Government was justified in declaring the lock-out and in giving directions to the Management. According to the workers, the order passed by the Government was both proper and in

consonance with the scheme of the Act. It is submitted that Section 10(3) read with Section 23 provides for a special situation where machinery under the Industrial Disputes Act is already set in motion. It is not only in the interest of the workmen and the Management but in public interest to prohibit the continuation of unilateral decision of lock-out by the Management. It is mentioned that the Labour authorities made several attempts to persuade the Management to take the workmen on duty but the petitioner Management did not adhere to the reasonable orders of the Government.

23. It is also incorporated in the reply that the Management has illegally and in violation of Section 33 of the Industrial Disputes Act, terminated and suspended the services of many workmen during the pendency of the Industrial Disputes Act. It is also mentioned that according to the settlement dated January 31, 1994 with the Management under the terms of settlement, which was valid for three years, it was mutually agreed between the parties inter alias that the workers would be entitled to the minimum pay-scale, monthly leave and other facilities at par with the Central Government Hospitals. It was also agreed that the appointment of casual/daily, wagers would be discouraged and that no extension or re-employment would be given to an employee of Class-III or Class-IV category after his retirement from service. The Management started acting in contravention of the settlement by creating new posts with consolidated salary. It is also mentioned that the petitioner Management filed a civil suit before Sub-Judge on false facts and obtained injunction order dated January 2, 1995, restraining the Workmen's Union from holding any demonstration within the radius of 25 ft, and ultimately on February 11, 1995, the Management declared illegal lock-out w.e.f. February 11, 1995.

24. The counter-affidavit has also been filed by Mr. H.D. Birdi, Labour Commissioner. It is mentioned in the counter-affidavit that despite notices, the Management did not appear before the Deputy Labour Commissioner on February 16, 1995 and instead sent letter. Again a notice was sent to the Management asking them to appear on February 20, 1995, but no one appeared on behalf of the Management. Shri N.L. Kanojia, Labour Officer was deputed along with two Labour Inspectors of the Department to visit the establishment to resolve the dispute. During the course of discussion, Shri Kanojia asked the Management representative Col. M.S. Murnal, V.S.M., Manager Administration, whether the Management is ready to take all the workmen who were present in the morning shifts as well as who were on duty roster on February 11, 1995 or not without any condition but the Management's representative Shri Murnal informed that the management is not ready to take all the workmen who were on the duty roll of the Management on February 11, 1995, even though the workmen were ready to resume their duty without conditions: It is also mentioned that the Management's Representative even refused to sign the proceedings. Again, a show cause notice dated February 22, 1995 was sent to the Management to explain its position as to why prohibitory orders be not issued against the Management for 5 continuation of illegal lock-out as the

Management refused to take all the workmen who were present on February 11, 1995, under the provisions of Industrial Disputes Act, 1947. The Management, of course, sent reply on February 22, 1995 and February 25, 1995, in which it is mentioned that the workmen were on illegal strike and were not reporting to duty. It is mentioned in the counter-affidavit that on March 8, 1995, the Management informed that they are ready to take 620 workmen on duty as per Annexure-1 and the workmen whose names are mentioned in Annexure-2 shall be deemed as suspended employees as and when they resume the duty. So, it was clear that the Management was not interested in taking all the workmen on duty. In reply to para 19, it is categorically mentioned in this affidavit that "It is denied that there is no lock-out. In fact, there is still lock-out in respect of certain employees of the Hospital. In reply to para 20, it is mentioned that "It is not a strike but in fact it was lock-out for which prohibitory orders were issued. Later on, the Management permitted only those workmen to join the duty whom they wanted to join duty and rest of the employees have not yet been taken on duty. The Labour Commissioner has issued duty on March 7, 1995 in accordance with the provisions of the Industrial Disputes Act, 1947.

25. Their Lordship of the Supreme Court in the matter of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, , held that "since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it u/s 10 is limited by Section 10(4) to the point specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided.

26. In The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, , their Lordships of the Supreme Court have emphasised the importance of drafting of reference u/s 10 of the Industrial Disputes Act. This has been observed in this case as under at p. 839 :

"If no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and workmen. The Government has to come to an opinion that an industrial dispute does exist and that opinion can only be formed on the basis that there was a dispute between the employee and the employer.

Where the retrenched employee and the Union had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement the reference made by the Government u/s 10 in respect of reinstatement is not competent."

27. The Supreme Court, in the case of Prem Kakar Vs. State of Haryana and Another, , has held as under :

"In entertaining an application for a writ of mandamus against an order made by the appropriate Government u/s 19(1) read with Section 12 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."

28. In New Delhi Tailoring Mazdoor Union v. S.C. Sharma & Co. (P) Ltd. 1979 (39) IF & L R 195, this Court has taken the view that, "when the demand is for lifting of a lock-out while the reference is with regard to the justifiability of termination of services of the workmen obviously the order of reference is incompetent. In this case, even before conciliation officer it was not pleaded that the termination was unjustified."

29. In the case of Indian Tourism Development Corporation Vs. Delhi Administration and Others, , Full Bench of this Court has held as under:

"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 of jurisdiction. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms 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 of the 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 has 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 lockout 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."

30. After examining the matter in great detail, the Court observed :

"We are, Therefore, of the opinion that the order of reference has to be quashed as the real dispute has not been referred. It will be open to the Delhi Administration to make another order of reference in the light of the material

before it construed in accordance with the observations made by this Court."

31. When ratio of all these aforementioned cases is examined it becomes abundantly clear that the State Government has to be extremely careful in drafting the reference and while drafting the reference, the State Government must take into consideration all vital facts, circumstances and material produced by both the sides.

32. In the instant case when this principle is made applicable the inevitable conclusion would be that the State Government while drafting the reference has not taken into consideration the vital material produced by the management on record. Following vital material was not considered by the Labour Commissioner while issuing the reference in question:

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

(ii) Reply dated February 16, 1996 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 ;

33. I am of the considered view that the real dispute has not been referred, because vital material produced by the management has not been taken into consideration and consequently the order of reference has to be quashed. It will be open to the Delhi Administration to make another order of reference in the light of material before it.

34. All interim orders passed by the Court from time to time are vacated. The Writ Petition No. 1009/1995 is allowed and C.W.P. No. 2454/1995 is dismissed.

35. In the facts and circumstances of this case, the parties are directed to bear their own costs.