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**(1996) 01 MP CK 0041**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 440 of 1992**

M.P. Iron and Steel Co.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision :** 09-01-1996

**Acts Referred:**

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

**Citation :** (1996) 2 LLJ 383

**Hon'ble Judges :** T.S. Doabia, J

**Bench :** Single Bench

**Advocate :** P.L. Dubey, for the Appellant; R.B. Chaturvedi, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

T.S. Doabia, J.—In exercise of the power conferred u/s 10 of the Industrial Disputes Act, 1947 the State of Madhya Pradesh being the appropriate Government referred a dispute between the petitioner and respondent No. 5 to the Labour Court No. 2 Gawlior. This reference is being challenged on the ground that the petitioner concerned while carrying on the activity of construction work was not covered by the term Industry and that there was no relationship of master and servant between the petitioner and respondent No. 5 as the respondent No. 5 was appointed as a driver by respondent No. 6 the Senior Vice President (Technical) in his personal capacity.

2. The brief facts which are elaborated in the petition be noticed.

3. The petitioner is a company engaged in constructing a factory building at Malanpur in the District of Bhind. When the writ petition was filed the building activity was on. The construction activity is said to be not covered by the term "Industry". It is stated that Vice President of the Company appointed respondent No. 5 as a driver. This engagement was given by the Vice - President on his own behalf. It is said that Vice-President who figures as respondent No. 6 was

supposed to get the salary bill of respondent No. 5 out of the perks made available to him. It is on this basis it is asserted that no relationship of master and servant came into existence between the petitioner and respondent No. 5.

4. The learned counsel for the petitioner has placed reliance on a decision given in the case of *Jamul Cement Works v. President State Industrial Court*. 1968 MPLJ 95, with a view to contend that workers engaged in the activity of construction do not fall within the definition of workman. In the above case construction workers of the cement factory raised a dispute under the M.P. Industrial Relations Act, 1960. This was held to be not maintainable. The reasoning given was the activity undertaken with a view to erect a cement factory is an activity which is not covered by the term industry.

5. As to what is the scope of judicial review, when a reference is made u/s 10 of the Act. This aspect of the matter be examined.

6. Making of an order of reference u/s 10(1) by all accepted notions is an administrative function to be discharged by the appropriate Government. The decision is based upon the opinion of the appropriate Government with respect to existence or apprehension of an Industrial Dispute. Whether reference is to be made or not is thus dependent upon the satisfaction of the appropriate Government. Judicial interference is to be rare. *State of Madras Vs. C.P. Sarathy and Another*, is a clear point for this view. No doubt there has been some thinking that the courts can interfere but then this can be done in exceptional cases only. This thinking would be found from the decision given by the Supreme Court in the case of *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, , and some other later decisions. Some of the exceptions which have been judicially carved out be noticed. These are:

i. Where the power is exercised by a Government which is not appropriate Government then in such cases the exercise of power would be void ab initio otherwise the opinion with respect to the determination of question as to existence of an Industrial Dispute the appropriate Government is the sole arbiter and its opinion is final. However, if it can be shown that in coming to this conclusion some extraneous matter has been considered then the position may be different. See *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, and *U.K. Roller Mills v. Industrial Tribunal Maharashtra* 1979 Lab I.C. 45. The first is the decision given by the Supreme Court and the latter by a Division Bench of Bombay High Court.

ii. If there is no material in forming an opinion or in the formation of an opinion some irrational state of affairs have been taken into consideration judicial review may be permissible. Again if some vital material is omitted from consideration it may be possible to interfere. See *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, .

iii. Where a case discloses non application of mind then it may again be possible for the court to interfere.

iv. Where allegations of malafide have been made the court may exercise judicial review and examine the matter. *British India Corporation Ltd. and Others Vs. The Industrial Tribunal, Punjab and Another*, would support such a provision.

v. Where there exists no industrial dispute then the question with regard to factual existence of the dispute can be made subject matter of challenge. See *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*,

vi. Where it can be shown that an activity is not an Industry it may be possible to exercise judicial review. See *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*,

7. Again the question as to whether there exists an Industrial Dispute or not and which question requires to be determined after examination of disputed question of facts interference may not be made by the High Court. This is because this is a matter which would fall within the domain of Industrial Tribunal. The following decisions deal with this aspect.

(a) *Shambu Nath Goyal Vs. Bank of Baroda*,

(b) *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*,

(c) *Nirmal Singh Vs. State of Punjab and Others*,

(d) *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*,

(e) *Ram Avtar Sharma and Others Vs. State of Haryana and Another*,

(f) *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*,

In the above cases it has been held that the question as to whether industrial dispute exists or not is to be decided by the Tribunal and is not the function of appropriate Government.

8. In the present case the question as to whether industrial dispute exists cannot be disputed. Whenever the relationship of master and servant is brought to an end, an Industrial dispute would come into existence. No other fact is required to be taken notice of. An individual dispute in a case where services of an employee are brought to an end would always be an Industrial Dispute. See Section 2A of Industrial Disputes Act, 1947. In the instant case the services of respondent No. 5, have been brought to an end and prima facie this would be an industrial dispute.

9. The question as to whether the petitioner concerned is an Industry or not be examined.

10. It would be apt to mention that several questions of fact would again be required to be gone into. The petitioner has placed reliance on a decision reported as *Jamul Cement Works (supra)*. It will be seen that the activity prior to

the manufacturing of cement i.e. activity of setting of a factory building was held to be not covered by the term Industry. However, if a particular concern is engaged only in the activity of raising the construction then the position would be entirely different. In this case, when the matter was considered by the conciliation officer all that was stated was that Madhya Pradesh Iron and Steel Co. is not an Industry as it is not producing, supplying or distributing the goods nor any services are being rendered by it. This reasoning cannot be accepted. To say that construction activity undertaken by a concern, can never be industry is a proposition which cannot be accepted. In Jamul Cement Works case, it was held that construction activity prior to the setting up of a Cement Factory is not an industry. The above decision was given after the matter was referred to the Tribunal and all relevant material was available to the Tribunal. It could record a finding. On the basis of a material so brought on the record a finding was recorded by this Court that the particular activity was not covered by the term "industry". The fact that the concept of industry has undergone a great change after the decision given by the Supreme Court in the case reported as Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, cannot be lost sight of.

11. To repeat the Contention, that the construction activity can never be "Industry" is a proposition which is not acceptable. Chambal Hydel Irrigation Project, Salandi Irrigation Project, Tenughat Dam, carried on by the State Government of Bihar and Balamela Dam Project have all been held to be industries in decision reported as Madhya Pradesh Irrigation Karmachari Sangh v. State of M.P. (1972 I LLJ 374), Chief Irrigation Orissa v. Harihar Patra, 1970 Lab IC 103. Management of Radio Foundation Ltd. v. State of Bihar 1970 Lab IC 1119, Ananda Chandra Swain Vs. State of Orissa and Another, respectively. In Management of Radio Foundation Ltd. v. State of Bihar (supra) a Division Bench observed that a particular portion of the work of construction of the Dam itself would be an industry. It was further held that the fact that this work is entrusted to an independent contractor would not alter the situation.

12. Thus, I am of the view that prima facie the petitioner has failed to make out any case which may call for interference under Article 226 of the Constitution of India. As and when all material comes before the Tribunal it would be able to record a finding with regard to issues raised by the Petitioner. Neither this Court nor appropriate Government could go into this question.

Thus, Labour Court, is left free to decide this issue. Petition is without merit and is dismissed.