
(2001) 08 DEL CK 0238

In the Delhi High Court

Case No : CWP No. 7842 of 2000 and CM 12132 of 2000

M/s Maya Export Corporation

APPELLANT

Vs

Secretary (Labour) and others

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2001) 94 DLT 810 : (2002) 93 FLR 926

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. S.N. Bhandari, Mr. Ram Krishna and Mr. Arvind Kumar, for the Appellant; Mr. V.K. Tandon and Mr. Sri Kumar, for the Respondent

Judgement

Vikramajit Sen, J.—By consent of Counsel for the parties the case is taken up for final arguments and disposal.

2. The Petitioner has impugned the Order of Respondent No.1 passed on 21.12.2000 referring the following disputes to adjudication by the Industrial Tribunal-III.:-

TERMS OF REFERENCE

"Whether the workmen shown in Annexure "A" are entitled to wages w.e.f. 01-12-2000 onwards and if so, what directions are necessary in this respect?"

3. It is not controverted by the Respondents that when the labour Officer had visited the site he had read the Lockout Notice issued by the Petitioner. The Respondents were, Therefore, fully aware that it was the Petitioner's case that they were compelled to declare a Lockout because their work-force/labour were resorting to go-slow tactics or stoppage of work intermittently. The Respondents were also aware that because of the nature of the Petitioner's business, i.e. export of merchandise within a definite period, 50% production was insufficient as it would lead to cancellation of orders.

4. It has been argued by Mr. Bhandari, Learned Senior Counsel appearing for the petitioner, that it was incumbent on the Administration that the entire dispute between the Petitioner and the Workmen should have been referred for adjudication. Respondent No.1, however, has only referred the question of the entitlement of the Workmen to wages with effect from 1.12.2000 onwards without simultaneously referring the legal propriety of the Lockout for adjudication.

5. Reliance was placed on the decision of the Division Bench of this Court in *Eagle Fashions, Delhi vs. Secretary (Labour) Government of National Capital Territory of Delhi, New Delhi and Others*, 1998 (1) L.L.N. 269 , in which it has been observed as follows:

"Having heard the learned counsel for the parties and having perused the material brought on record, we are satisfied that the terms of reference have not been properly drawn up and Therefore the order of reference is vitiated. The Full Bench decision in this Court in *India Tourism Development Corporation v. Delhi Administrative* (1982 (2) L.L.N. 762, is an authority for the proposition that the terms of the reference should clearly spell out the real dispute between the parties and if that be not so, the order of reference would be liable to be interfered with an exercise of writ jurisdiction of this Court as the Labour Court would not travel beyond the reference and decide the real question in dispute when the factum of employment and termination itself were in dispute, the terms of reference could not have been so framed as to presume the employment and its termination and confiding the reference merely to adjudication or illegality or unjustness thereof. We are of the opinion that the order of reference has been drawn up without application of mind and hence is vitiated."

6. Mr. Bhandari has also garnered support for his contentions from the decision of the Hon"ble Supreme Court in *Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another*, . In that case also powers conferred under Sub-Section (3) of Section 10 of the Industrial Disputes Act has sought to be exercised for predicating an order prohibiting the continuance of the Lockout.

7. Since the legality of the Lockout has not been referred to adjudication, on the strength of observations made in *Edward Keventers's* case (supra), it would not be open to the Respondents to exercise powers u/s 10(3) of the Act since this question had not been made the subject matter of the Reference u/s 10(1)

8. As agreed between the parties the Reference is quashed. The Respondent No.1 is directed to draw up a fresh order of Reference after hearing the parties, including therein the question of whether a Lockout had been justifiably and legally declared by the Management. Quite obviously, the entitlement of the Workmen to wages would be largely and directly dependent on whether the Lockout is legal and/or justified.

9. The exercise of framing a fresh reference should be completed within thirty days.

10. Interim Orders are confirmed. Since the Reference is quashed, the prosecution based on it is also quashed.

11. dusty to all the parties on payment of fees for Urgent Certified Copies.