
(2016) 09 OHC CK 0043
In the Orissa High Court
Case No : W.P.(C). No.7342 of 2016

M/s. MSP Metallica Ltd.

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(3)

Citation : (2016) 151 FLR 956 : (2016) 4 LLJ 133

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Jagannath Patnaik, Debendra Mohanta and V. Dalai, Advocates, for the Petitioner; Additional Government Advocate, for the Opposite Parties

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—This writ petition is against the order as contained in Memo No.2905 dated 6.4.2016(Annexure-14) by order of His Excellency the Governor under the signature of the Under Secretary to Government, Labour and ESI Department, Government of Odisha whereby and where under in exercise of power conferred under Sub-section (3) of Section 10 of the Industrial Disputes Act, 1947 the State Government has prohibited continuance of the lockout.

2. Brief facts in narrow compass is that the petitioner-Management is a company established in pursuance to the memorandum of understanding concluded with the Government of Odisha on 27.11.2004 under which business of steel manufacturing facilities has been establishment to manufacture sponge iron, pellet, pig iron, captive power and steel billet. For the purpose of carrying out manufacturing activities at its factory, the petitioner company employs about 700 workmen. Apart from managerial and supervisory personnel employed throughout and taking together the employee strength at the factory is 1050. That apart, there are several contractors engaged by the company at its factory for the purpose of executing various casual jobs who employ contract laborers in

the factory. The petitioner-company having failed financial hardship in the manufacturing process due to various reasons, has requested the workmen to give full cooperation so that the financial crisis may be resolved, but the workers has agitated by launching large scale demonstration and strike inside the factory and due to that the manufacturing process has been hampered leading to more financial crunch and the management was unable to pay wages to the workers, because of its inability to generate sufficient fund, which has been brought to the notice of the Collector-cum-District Magistrate, Jharsuguda by the representation dated 15.2.2016 under Annexure-3 regarding redressal of their grievance of release of salary and wages of the workers. The Collector-cum-District Magistrate, Jharsuguda has referred the matter before the Conciliation Officer for its settlement and the Conciliation Officer has tried to resolve the dispute but however, in the meanwhile petitioner-management has given a notice of lockout and thereby the Conciliation Officer-cum-District Labour Officer, Jharsuguda has submitted failure report before the appropriate Government by submitting failure report with a request that the notice of lockout declared by the Management of MSP Metallics Ltd., Marakuta, Dist.Jharsuguda is not legal and justified and to take appropriate steps in this regard and thereafter the appropriate Government while accepting the failure report has made the terms of reference for its adjudication by the Labour Court, the terms of reference is as follows:

"Whether the action of the Management of MSP Metallics Ltd., Vill/P.O. Marakuta, Dist. Jharsuguda in refusing employment to all workmen w.e.f.13.2.2016 in the guise of lockout is legal and/or justified ? If not, to what relief the workmen are entitled ?"

3. The Government in exercise of power conferred under Sub-Section (3) of Section 10 of the Industrial Disputes Act, 1947 has prohibited continuance of the aforesaid lockout vide order dated 6.4.2016 (Annexure-14) which is under challenge in this writ petition on the ground that provision of section 10(3) of the Industrial Disputes Act,1947 stipulates a condition that prohibitory order under section 10(3) of the Act only to be passed where an industrial dispute has been referred to the Board but since the dispute mainly relates to disbursement of salary/wages as would be evident from grievance of the workmen under Annexure-3 which is the representation dated 15.2.2016 and from its perusal, the sole grievance of the workmen is to release salary and wages of the workers and employees for the months of December, 2015 and January, 2016 and as such the order dated 6.4.2016 cannot be said to be in consonance with the provisions of Section 10(3) of the Industrial Disputes Act, 1947 since the prohibitory order has been passed on the basis of the Reference dated 6.4.2016 which is not the dispute having been raised by the workmen as would be evident from their representation dated 15.2.2016.

Learned counsel representing the petitioner has relied upon judgment of the High Court of Patna in C.W.J.C. No. 1922/1990(R) decided on 2.11.1998.

4. Learned counsel representing the opposite party-State has vehemently

opposed prayer of the petitioner and submitted that the order passed by the State Government on 6.4.2016 is not contrary to the provisions as contained under section 10(3) of the Industrial Disputes Act, 1947 as because the dispute which has been raised by the workmen was regarding disbursement of their salary since they have made representation before the Collector-cum-District Magistrate, Jharsuguda vide representation dated 15.2.2016 and the Collector-cum-District Magistrate has referred the same before the Conciliation Officer-cum-District Labour Officer, Jharsuguda for its settlement but the matter could not have been resolved and a failure report has been submitted by the Conciliation Officer by exercising of powers conferred under section 12(4) of the Industrial Disputes Act, 1947 as would be evident from Annexure-C/5 annexed to the counter affidavit, wherein the Conciliation Officer had taken into consideration the fact that demand of salary which was to be resolved before the Conciliation Officer, when it was pending, notice of lockout was issued and same was brought on record before the Conciliation Officer and after taking into consideration the fact that notice of lockout has been given, the Conciliation Officer has submitted failure report by requesting the Government to take appropriate steps in this regard.

It has been submitted that although dispute has been raised by the workmen initially for disbursement of their wages/salary but the petitioner-Management instead of paying same issued notice for lockout and the Conciliation Officer taking into consideration ulterior motive of the management, that the intention of the management in not paying wages and salary, rather nothing is to disburse to them and as such failure report has been submitted which has been accepted by the appropriate Government and the terms of Reference has been made as would be evident from the order dated 6.4.2016 issued in the name of His Excellency the Governor under the signature of the Under secretary to Government, Labour & ESI Department, Government of Odisha. Therefore, the Government in exercise of power conferred under section 10(3) of the Industrial Disputes Act, 1947 has rightly resorted to the said provision by prohibiting continuance of the aforesaid lockout and as such it cannot be said that the prohibitory order dated 6.4.2016 suffers from infirmity rather it is well within the jurisdiction.

5. Heard learned counsel for the parties and after appreciating rival submissions, the fact which is not in dispute is that the workmen are the workers working under the petitioner-management and when the factory was running, the petitioner-management has suffered financial crisis and in order to meet out the crisis some proposal has been given to the workers working there to cooperate with the petitioner-management, but the workers have agitated by demonstrating against the proposal which ultimately led not to disburse their wages/salaries and as such they have no option, has made representation before the Collector-cum-District Magistrate, Jharsuguda on 15.2.2016 (Annexure-3), the Collector-cum-District Magistrate, Jharsuguda has referred the matter before the Conciliation Officer-cum-District Labour Officer, Jharsuguda for its conciliation

and accordingly the Conciliation Officer in exercise of power conferred under section 12 of the Industrial Disputes Act, 1947 has issued notice to the parties and both the parties have appeared, when the matter was pending before the Conciliation Officer notice of lockout was issued. When the matter could not have been resolved the Conciliation Officer had submitted failure report in taking note of the fact that the petitioner-management is not desirous for redressal of the grievance regarding disbursement of wages/salary, rather they have gone for notice of lockout, hence failure report has been prepared and submitted before the appropriate Government by requesting to take appropriate action in this respect and the appropriate Government have accepted the failure report and has made reference to the effect that

"Whether the action of the Management of MSP Metallics Ltd., Vill/P.O. Marakuta, Dist.Jharsuguda in refusing employment to all workmen w.e.f.13.2.2016 in the guise of lockout is legal and/or justified ? If not, to what relief the workmen are entitled ?" as would be evident from the order dated 6.4.2016(Annexure-13). The State Government has simultaneously passed order on 6.4.2016 in exercise of power conferred under sub-section (3) of Section 10 of the Industrial Disputes Act, 1947 prohibiting continuance of the lockout which is under challenge in this writ petition.

6. In order to appreciate submissions of the parties it would be relevant to refer Section 10 of the Industrial Disputes Act.

"10. Reference of disputes to Boards, courts or Tribunals-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause

(c):

(Provided that where the dispute relates to a public utility service and a notice

under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced: (Provided also that where the dispute in relation to which the Central Government is the appropriate government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government]

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule to a National Tribunal for adjudication.]

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, court, [Labour Court, Tribunal or National Tribunal], the appropriate government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate government: Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a civil court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.]

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be,] shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of, such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]

(6) Where any reference has been made under sub-section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly-

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, insofar as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

[Explanation: In this sub-section "Labour Court" or "Tribunal" includes any court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate government, is referred to a National Tribunal, then, notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a

reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.]

(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate government.

Section 10(1) starts with the words "if any industrial dispute exists or is apprehended" the appropriate Government may refer the dispute to a Board for promoting a settlement thereof or to a court for inquiry or to Labour Court for adjudication.

Sub-section (3) of Section 10 confers power upon the appropriate Government to pass prohibitory order with respect to continuance of strike or lockout in connection with the dispute which may be in existence on the date of reference. Thus, it is evident from the bare reading of the provision of section 10 of the Industrial Disputes Act, 1947 that if in the opinion of the appropriate Government "if any industrial dispute exists or is apprehended", the same can be referred before the appropriate authority for its adjudication, hence even in case of dispute having been apprehended, the same can be referred before the competent authority for its adjudication. Section 10(3) stipulates power upon the appropriate Government to pass prohibitory order in connection with continuance of lockout, in connection with such dispute it may be in existence on the date of the reference.

The purpose of provision under Section 10(3) is to prohibit the commencement and continuance of strikes and lockouts in certain circumstances for achieving its object when the investigation and settlement of industrial disputes in a peaceful atmosphere which empowers the appropriate Government to prohibit the continuance of strikes. Pre-conditions to the exercise of the power under this sub-section are-

- (i) an industrial dispute should have been referred to a board, labour court, tribunal or national tribunal under section 10 or arbitrator under section 10A; and
- (ii) on the date of the reference there should be a strike or lockout in existence in connection with such dispute.

When these two conditions are existing, the appropriate Government has the power to prohibit by order the continuance of such strike or lockout. The words "the appropriate Government may by order", indicates that unless the appropriate Government makes the prohibitory order, the strike or lockout will not be automatically prohibited. The power, therefore, has to be exercised by the Government in its discretion. The effect of this sub-section is that even through a

strike or lockout when commenced was legal, it would become illegal if continued after the prohibitory order under section 10(3) has been made. Hence, it is to be seen that such dispute is in existence on the date of reference and that for exercising the power in sub-section (3), it is necessary that the industrial dispute had been referred to the authority concerned under the section and the dispute was such as was in existence on the date of reference.

7. In the light of this legal situation, the fact of this case is to be assessed. The fact which is not in dispute is that the workmen have demanded disbursement of their wages, matter went before the Conciliation Officer but in the meanwhile, notice of lockout has been issued by the petitioner-management for closure of the factory which itself suggests that when the factory will be closed, there was no question of disbursement of wages, rather the workmen will be thrown out from service. In this case, the meaning of lockout is also to be seen as per the definition under section 2(I) of the Industrial Disputes Act, 1947 which speaks as follows:

"lock-out? means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him."

Thus the meaning of lockout as defined under section 2(I) is

- (i) temporary closing of a place of employment, or
- (ii) the suspension of work, or
- (iii) the refusal of an employer to continue to employ any number of persons employed by him.

Thus, in case of three circumstances as referred to above, it will be said that the factory has been lockout.

Here notice for lockout has been issued which itself suggests that there was refusal by the employer to continue the employee to work and taking into consideration this aspect of the matter as well as the officer who was in seisin of the matter regarding redressal of the grievance with respect to disbursement of wages/salaries when came to notice of lockout, has apprehended that the workmen would be refused to continue with employment under the petitioner-management and as such request has been made to take appropriate action and in terms thereof, terms of reference has been made vide order dated 6.4.2016 under Annexure-13 to the writ petition, hence the dispute which initially was initiated regarding disbursement of salary/wages has now been culminated to the dispute of refusal of their employment after notice of lockout has been issued by the petitioner-management, hence we have no hesitation to hold that the dispute as per the reference contained in Annexure-13 to the writ petition will be said to be a reference for redressal of dispute by a Tribunal.

Moreover, petitioner has not challenged terms of reference dated 6.4.2016 as

contained in Annexure-13 annexed to the writ petition which also suggests that the dispute as per the reference dated 6.4.2016 has been referred to the Labour Court and in course thereof, notice of lockout has been issued, hence the appropriate Government is to exercise power conferred under section 10(3) of the Industrial Disputes Act,1947.

In the light of the above discussion, the argument advance by learned counsel for the petitioner that the workmen has never raised a dispute regarding refusal of employment in the guise of lockout, rather the dispute was related to disbursal of wages/salary, is hereby rejected having no substance.

8. So far as reliance as has been placed by the petitioner-management upon the judgment of the Patna High Court in C.W.J.C.No.1922/1990(R) decided on 2.11.1998, the same is not applicable in the facts of this case in view of the fact that in the said judgment terms of reference was about validity/propriety of the lockout and in that pretext judgment has been delivered, but here the fact is quite different as because the terms of reference is not regarding validity and propriety of the lockout, rather action of the management in refusing employment, hence the judgment is not applicable in the facts and circumstances of the case.

9. In totality of the entire facts and circumstances of the case as discussed by us herein above, we are of the conscious view that the order passed by the appropriate Government under sub-section (3) of Section 10 of the Industrial Disputes Act,1947 dated 6.4.2016 as contained in Annexure-14 has got no infirmity, hence we decline to interfere with the same.

10. Accordingly, the writ petition stands dismissed.