

(1997) 09 KAR CK 0096
In the Karnataka High Court
Case No : Writ Appeal No. 4108 of 1995

M/s. Senapathy Whitelay Limited, Ramanagaram	APPELLANT
Vs	
Puttaswamy and others	RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 10 (4-A)

Citation : (1999) 4 KarLJ 216

Hon'ble Judges : R.P. Sethi, C.J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : Sri B.C. Prabhakar, for the Appellant; Sri. T. Narayana Swamy, for the Respondent

Judgement

1. In an application filed u/s 10(4-A) of the Industrial Disputes Act (hereinafter called as "the Act") by the respondent-workman the appellant herein raised a preliminary objection regarding maintainability of the application on the ground that, as the earlier application of the workman seeking reference had been rejected by the Government, he was not entitled to move the Labour Court for adjudication of the dispute raised by him. The preliminary issue was decided by the Labour Court, vide the order dated 22-10-1994, holding that the workman was entitled to invoke the jurisdiction of the Labour Court u/s 10(4-A) of the Act, provided the application is filed within the statutory period specified under the aforesaid section. The writ petition filed against the order of the Labour Court was dismissed by the learned Single Judge, vide the orders impugned in this appeal.

2. Section 10(4-A) was incorporated, vide Karnataka Act No. 5 of 1988, and was enforced with effect from 7-4-1988. It provides:

"Notwithstanding anything contained in Section 9-C and in this section, in the case of a dispute falling within the scope of Section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of

commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-section (1).

3. It is not disputed that the application was filed by the respondent-workman within a period of 6 months from the date of the enforcement of the aforesaid provision. The section itself provides that such an application when filed shall be disposed of in the same manner as a dispute referred under sub-section (1) of Section 10 of the Act. The mere fact that earlier the prayer of the workman for making a reference for adjudication of the dispute to the Labour Court had been rejected did not deprive him to file an application for reference of the dispute to the Labour Court even in the absence of sub-section (4-A). Sub-section (4-A) only authorises the workman to approach the Labour Court directly without having resort to the provision of Section 10(1) of the Act by insisting the reference by the Government. If the consecutive and further application is not barred under sub-section (1) of Section 10 of the Act, there was nothing u/s 10(4-A) of the Act which prevented the respondent-workman from approaching the Labour Court for adjudication of the dispute raised by him. The Hon'ble Supreme Court in *M/s. Avon Services Production Agencies (Private) Limited v Industrial Tribunal, Haryana and Others*, has held that the Act did not debar a work- man for seeking a reference of his dispute despite his earlier prayer having been declined. The refusal to make the reference did not tantamount to say that the dispute, if at all existed, stood resolved. The Supreme Court held:

"8. It follows that the Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. But it was urged that the ratio of the decision would show that the Government must have some fresh material made available to it subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference. It is not absolutely necessary that there ought to be some fresh material before the Government for reconsideration of its earlier decision. The Government may reconsider its decision on account of some new facts brought to its notice or for any other relevant consideration may include the threat to industrial peace by the continued existence of the industrial dispute without any attempt at resolving it and that a reference would at least bring the parties to the talking table. A refusal of the appropriate Government to make a reference is not indicative of an exercise of power u/s 10(1), the exercise of the power would be a positive act of making a reference. Therefore, when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that does not denude the power. The power to make the reference remains intact and can be exercised if the material and relevant considerations for exercise of power are available; they being the continued existence of the dispute and the wisdom of referring it, in the larger interest of industrial peace and harmony. Refusal to make the reference does not, tantamount to saying that the dispute, if it at all

existed, stands resolved. On the contrary the refusal to make a reference not compelling the parties to come to a talking table or before a quasi-judicial Tribunal would further accentuate the feelings and a threat to direct action may become imminent and the Government may as well reconsider the decision and make the reference. It is, therefore, not possible to accept the submission that if the Government had on an earlier occasion declined to make a reference unless it be shown that there was some fresh or additional material before the Government the second reference would be incompetent. It has not been shown that the dispute had ceased to exist and the very existence of the dispute enables the Government to exercise the power u/s 10(1) and it has been rightly exercised. The view which we are taking is in accord with the decision of this Court in *Binny Ltd. Vs. Their Workmen*, wherein it was found that the Government had declined to make a reference of the dispute on two previous occasions on the basis of which it was contended that the reference was invalid. The contention was negated observing that the mere fact that on two previous occasions the Government had taken the view that no reference was called for does not entitle the Court to conclude that there could be no cause for a reference at a later date".

This position of law was reiterated by the Hon''ble Supreme Court in *Sultan Singh v State of Haryana and Another*.

4. The learned Single Judge was therefore justified in dismissing the writ petition filed against the interim order of the Labour Court rejecting the preliminary objection.

5. At this stage, we would like to mention that the practice of framing preliminary issues in the industrial dispute is contrary to the law settled by the Supreme Court and if permitted it would defeat the very purpose for which the Industrial Disputes Act was enacted. In an industrial dispute pending in Labour Court all the issues are required to be decided at one and the same time, as was held by the Hon''ble Supreme Court in *D.P. Maheshwari v Delhi Administration and Others*. The Labour Courts are expected and directed to appreciate this position of law and refrain from framing and deciding a preliminary issue in an industrial dispute.

6. There is no merit in this appeal. It is dismissed.

7. No order as to costs.