
(1995) 08 KAR CK 0066
In the Karnataka High Court
Case No : Writ Petition No. 31421 of 1993

Mypower Mazdoor Welfare Union

APPELLANT

Vs

Secretary and Commissioner

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1995) ILR (Kar) 3223 : (1995) 5 KarLJ 326

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Judgement

Saldanha, J.—This Petition raises a rather subtle issue concerning the delicate question relating to the exact function of the Government with regard to the making of a Reference u/s 10 of the Industrial Disputes Act where the conciliation has failed. To amplify the exact nature of the controversy, what is contended is that the Government is not the adjudicating authority in such situations and therefore it is not entitled to evaluate the merits of the case which can only be done by the Labour Court. In sum and substance, what is contended is that where a settlement has failed at the conciliation level that as long as a bona fide dispute exists, the matter must be referred to the competent Court and that it is not within the province of the Government to refuse a Reference.

2. The facts are within a very narrow ambit. The petitioner-Union represents certain employees who are designated as helpers and are employees of the Karnataka Power Corporation Limited, hereinafter referred to as the K. P. C. Briefly stated, they contend that they possess the requisite skills and qualifications for the higher post of Operatives (General) and Operative (Works) and Junior Assistants despite which, they are wrongly retained in the Helper cadre and are therefore deprived of their benefits. Their grievance was also that they were entitled to in service recruitment to the higher post but that this was denied to them. To contention of the Management was that this position is factually incorrect and that the petitioners-employees were found unsuitable for

the higher post. The case was referred to conciliation and the Officer submitted a failure report.

3. The failure report submitted by the Commissioner of Labour, Bangalore, came to be considered by the Government of Karnataka and the Under Secretary to Government, Social Welfare and Labour Department, by endorsement dated 17.6.1992 and recorded a finding that this was not a fit case in which a Reference should be made. Detailed reasons have been set out for this decision and the petitioner-Union once again represented to the Authority concerned whereupon, the Government by order dated 25.6.1993 reiterated the position that no case existed for making such a Reference. It is against these two orders that the present Petition has been filed.

4. The petitioner's learned Advocate pointed out that this is a case where injustice has been done to the workmen concerned and that the contention of the respondent-Corporation is patently false. He submitted that the conciliation efforts broke down because the Management refused to accede to the rightful demands of the petitioners and that in these circumstances, this was a fit case in which a Reference ought to have been made. He has seriously attacked the impugned orders and has placed strong reliance on a decision of the Supreme court reported in *Ram Avtar Sharma and Others Vs. State of Haryana and Another*. He relies on the observations of the Supreme Court where it has been held that in exercising these powers, the function performed by the appropriate government is an administrative function and not a judicial or quasi judicial function. The Supreme Court was following, in this regard an earlier decision of the Apex Court reported in *Shambu Nath Goyal Vs. Bank of Baroda*. The Supreme Court further observed that if the Government performs an administrative action while either making or refusing to make a reference, it cannot delve into the merits of the dispute and take upon itself the determination of *lis*. This would certainly be in excess of the power conferred on it by the Section which requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This decision was followed by a learned single Judge of the Punjab and Haryana High Court in the case reported in 1994 II CLR 1070 *Shri Jai Nath Mandal v. State of Haryana & Anr.*. In sum and substance, what is contended by the petitioner's learned Advocate is that the scope of the power vested in the Government is extremely limited in such cases to the extent of ascertaining whether a dispute exists or persists and that the examination of the nature of the dispute or its genuineness is outside the jurisdiction of the Government. In other words, the argument is tantamount to contending that in all cases where the conciliation has failed, that a Reference is automatic.

5. The respondents have contested this position because the submission is that the Government is required to apply its mind to the nature of the controversy and in those of the cases where a Reference is unwarranted that the discretion lies with the Government to refuse a Reference.

6. As far as the legal position is concerned, one needs to take cognizance of the fact that if the petitioner's submissions were to be upheld, the provision for routing the matter through the Government after the stage of conciliation is over is rendered redundant. The law envisages that the Government should apply its mind to the nature of the so called dispute and come to a conclusion on the question of appropriateness of making a reference. This is a delicate area insofar as the Courts have held that the Government is not to act as the adjudicating authority for purposes of examining the dispute in question insofar as it is performing administrative functions and the decision on the dispute being a judicial function has to be left to the Authority designated under the Industrial Disputes Act. This does not ipso facto mean that the Government is to act almost like a Post Office or a conveyer belt and that every case in which the conciliation has failed must be mechanically referred to the Court. The legislative intent behind routing the case through the Government at this point of time is in order to ascertain whether there is any scope left for referring the case further. This is virtually a stage of scrutiny and one needs to take note of the fact that it has been proceeded by a conciliation process wherein, an independent authority has met the parties, attempted a resolution and has submitted a failure report. Such a report would envisage a situation where no meeting point is possible but more importantly, it could also indicate that the so-called dispute or grievance was baseless, without substance, frivolous or unjustified. It is the record of the case and its report which are required to be scrutinised by the Government as it is very necessary at that stage and point of time to make way for the genuine case and to cull out those which are devoid of merit. It is precisely this scrutiny procedure which envisages a review of the record, that is the examination done by the Government at the stage of making a reference.

7. The law envisages a safety procedure at this stage in order to ensure that deserving cases are not exterminated wrongly and therefore, reasons are required to be given for the decision and communicated and these orders are capable of being challenged if the decision is erroneous, arbitrary or otherwise unsustainable. The nature and scope of the scrutiny which the Government can undertake is necessarily within limited parameters. Whereas the record and the report require examination, the Government has to stop short of the process of deciding or adjudicating because this would be in excess of its jurisdiction.

8. Coming to the facts of the present case, the two impugned orders which are annexed to the Petition indicate that at the Government level the entire nature and scope of the proceeding-dispute has been reviewed. The petitioners were adamant about their grievance and refused to accept the stand of the Corporation which was why, the conciliation failed. It was equally correct to record that the Corporation could not concede the demand of the petitioners. This would not ipso facto make it a dispute or justify a Reference unless there was some basis or substance in the case. No grievance is one sided and the two orders very clearly indicate that they are detailed speaking orders wherein all aspects of the case were examined and the Government has come to the

conclusion that the grievance was baseless. On a re-examination of those orders, it would be difficult to sustain any other view because the petitioner's grievance was in fact devoid of substance. The mere fact that they were dissatisfied with the result of the conciliation or that the Management did not concede their demands would not ipso facto indicate that a dispute on which an adjudication was required still persisted. A party may have a grievance but if on an examination of that grievance it is found to be baseless, there is nothing left for adjudication and therefore, a Reference would not be competent. This is precisely the situation that emerged in the present case. It would be wrong to hold that the Government has acted incorrectly or that it has exceeded its jurisdiction while doing so. I am unable to accept the argument canvassed on behalf of the petitioners that the speaking orders passed by the Government in fact decide the case on merits. Those orders indicate that there has been due application of mind directed towards the question as to whether a dispute for adjudication exists and the Government has come to the conclusion that the answer is in the negative.

9. The law has been correctly understood, applied and followed in this case and therefore, to my mind, the petitioners are not entitled to any reliefs. The petition accordingly fails and stands disposed of.