

(2024) 12 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 7892 of 2021

National Engineering Industry Ltd. Versus

APPELLANT

Vs

Deputy Labour Commissioner & Ors.

RESPONDENT

Date of Decision : 24-12-2024

Acts Referred:

Constitution of India, 1950 — Articles 226, 227

Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 12(4), 12(5)

Citation : (2024) 12 GUJ CK 0061

Hon'ble Judges : M. K. Thakker, J

Bench : Single Bench

Advocate : Hamesh C Naidu, Surbhi Bhati, Sangeeta Pahwa, Thakkar And Pahwa Advocates

Final Decision : Dismissed

Judgement

M. K. Thakker, J

1. Rule returnable forthwith. Learned advocates for the respondents waives service of Rule.

2. With the consent of the parties the matters are heard finally.

3. Being aggrieved and dissatisfied with the reference order made by the State government to the learned Industrial Tribunal, Ahmedabad present petition is filed under Article 226 and 227 of the Constitution of India.

4. The facts needed to be considered for the disposal of the case are as under:

4.1. The petitioner company is engaged in manufacturing and export and is re-known for excellent quality and delivery of the bearings and it's one plant is located at Salvi, Vadodara which became operational since 2014. Labour dispute arose in the said plaint 04.08.2020 and as per the allegation of the petitioner company on the instigation of Union, the employees of the petitioner and the contract casual labourers went on strike. Due to intervention of local MLA on

10.08.2020 the strike was called off and all employees of the company were permitted to join service without changes in their service conditions. Thereafter, Union again got involved in instigating the contract labours and one of the contract labourer stopped to resume the duty and he was absent for more than 10 days and had travelled inter State during Covid pandemic. On resuming the duties, the employee refused to undergo the Covid test and instigated other employees to go on strike. After the employees went on strike, the government labour officer visited the premises and after insistence, the workman resumed the duties. On 02.12.2020 again the workers went on strike to bring pressure on the company to cancel the suspension and inquiry of 15 employees. The Union send charter of demand to the petitioner company and pursuant thereto petitioner company was called for conciliation with regard to the demand raised by contract labourer in IDR Case No.220 of 2020. Thereafter, the contention was raised that it was not strike but the same was lock-out. To decide the same, the reference was made on 12.03.2021 by 398 workers, who have not been permitted to work.

4.2. The aforesaid order of reference was challenged before this Court by filing the SCA No.7377 of 2021 and same is pending for adjudication before this Court. On the same day i.e on 12.03.2021, the second reference order was passed by the respondent no.3 in conciliation case no.220 of 2020 to decide the 22 demand including wage revision of 398 workmen and to get permanent status of 337 workmen, which is the subject matter of challenge before this Court.

5. Heard learned senior advocate Mr.K.M.Patel with learned advocate Mr.Hamesh Naidu and learned advocate Ms.Sangeeta Pahwa for the respondent.

5.1. Learned senior advocate Mr.K.M.Patel submits that the respondent no.3 has made reference without application of mind and without hearing the present petitioner adequately. The conciliation proceedings were held for 337 employees in conciliation case no.220 of 2020 however, the reference was referred for adjudication to the learned Tribunal for 398 employees. This apparently shows that without having applying the mind, in a mechanical manner, the reference order was passed. Learned senior advocate Mr.K.M.Patel submits that list which was annexed in the IDR case No.221 of 2020 was annexed with the conciliation case no.220 of 2020. Learned senior advocate Mr.K.M.Patel submits that erroneously 61 employees, who are the regular employees, were also made a party of the reference which was raised for contractual employees. Learned senior advocate Mr.K.M.Patel submits that without joining the contractor as a party, reference was made with by the contractual employees, who are in number 337 employees. Learned senior advocate Mr.K.M.Patel submits that considering the charter of demand wherein, in all 22 demands were raised and out of said demands, demand no.19 and 20 is with regard to treating the contractual employees as an employee of the principal employer. Learned senior advocate Mr.K.M.Patel submits that without declaring the contract as sham and bogus the demand to treat the employees as employee of principal employer was

made. Learned senior advocate Mr.K.M.Patel submits that even the other demands which are raised also suggest that that demand is pertaining to the employee who are the regular employees however, without declaring the contractual employee as a regular employee, all other demands were also raised.

5.2. Learned senior advocate Mr.K.M.Patel on the day when the date of conciliation is fixed i.e on 16.12.2020 dispute was referred for the appropriate government. Learned senior advocate Mr.K.M.Patel submits that though the list which was signed by the Assistant Commissioner of Labour was relied by the Commissioner of Labour which is for the 398 workers, Learned senior advocate Mr.K.M.Patel has relied on the decision rendered by this Court in the case of National Engineering Industries Ltd. Vs State of Rajasthan & Ors. reported in AIR 2000 SC 469 and submitted that without calling for the material, the government has formed its opinion that industrial dispute exists. Learned senior advocate Mr.K.M.Patel submits that without discharging its preliminary functions to see that dispute is resolved directly the failure report was submitted. Learned senior advocate Mr.K.M.Patel submits that in any case, the dispute was resolved without providing adequate opportunity therefore, impugned order of reference to the learned Industrial Tribunal deserve to be set aside and the petition is required to be allowed.

6. This petition is vehemently opposed by the learned advocate Ms.Sangita Pahwa who submitted that the charter of demand which is produced before this Court suggests that along with the regular employees, demand is raised by the employees of so called labour contractors and the list of labour contractors is annexed with the charter of demand. Learned advocate Ms.Sangita Pahwa further submits that the demand no.1 to 18 is raised for all employees and demand no.19 to 20 is only related to contractual employees. Learned advocate Ms.Sangita Pahwa submits that so far as the adequate opportunity is concerned, the opportunity was given by the respondent no.3 by issuing the notice on 17.10.2022 making it returnable on 02.11.2022. Subsequently, pre-conciliation proceedings was adjourned on 23.11.2020, 11.12.2020 and on that day the dispute was admitted and subsequently, notice was issued on 03.12.2020 making it returnable in 16.12.2020. Learned advocate Ms.Sangita Pahwa further submits that the petitioner was represented through Joint Manager, HR only on 16.12.2020 and as per the noting which was found to have been made by the respondent no.3 only the dispute is raised that all the demands are related to contractual labourers and all other contract labourers were terminated therefore, no question arose for raising dispute before the Authority. Learned advocate Ms.Sangita Pahwa relies on section 12 of the I.D.Act and submitted that Conciliation Officer without any delay called the parties for the purpose of fair and amicable settlement and in the event of no settlement, then Conciliation Officer would close the investigation and send the same to the appropriate government with failure report. Learned advocate Ms.Sangita Pahwa relies on the decision rendered by this Court in the case of Managing Director vs Labour Contractor in SCA 4470 of 2014 and has submitted that none of the provisions of

law mandates joining the Contractor as a party while exercising the power under section 10(1) of the Act to refer the dispute for adjudication. Learned advocate Ms.Sangita Pahwa further submits that all the contentions which are raised is premature at this stage as adjudication of the dispute is yet to be taken place and only the Industrial Tribunal would have power to decide that contention raised by the applicant with regard to the contractual employees can be treated at par with the regular employees or not. Considering the same, learned advocate Ms.Pahwa submits that no case is made out and therefore, this petition deserves to be dismissed.

7. Learned AGP Ms.Surbhi Bhati relies on the affidavit filed by the respondent no.1 and submitted that respondent no.2 Union has raised the charter of demand on 24.08.2020 and was forwarded the same which pertains to the service condition to the petitioner company. The petitioner company did not entertain the aforementioned charter of demand raised by the Union and therefore, respondent no.2 has approached the Conciliation Officer and Assistant Labour Commissioner, Vadodara to intervene in the matter and to start conciliation process. The Conciliation Officer has issued notice on 17.10.2020 for preliminary discussion to the petitioner company intimating to remain present on 02.11.2020. On the day fixed for preliminary discussion the respondent no.2 Union were remain present however, no one remained present from the petitioner company. In the interest of justice, the conciliation proceedings were adjourned on 23.11.2020 and 01.12.2020. On this date also petitioner company did not remain present therefore, Conciliation Officer has admitted the matter on 01.12.2020 and again notice was issued to both the parties intimating to remain present on 16.12.2020. On that day petitioner company remained present before the Conciliation Officer but did not submit any written statement and therefore, Conciliation Officer heard both the parties and came to the conclusion that there is no scope for settlement and thus failure report was forwarded to respondent no.3 to refer industrial dispute between the parties to the Industrial Tribunal.

7.1. It is submitted by the learned AGP Ms.Surbhi Bhati that main grievance of the company that though the Conciliation proceedings were held for 337 workers in conciliation Case No.220 of 2020, the reference for adjudication to the tribunal for 398 workers was made. It is submitted that respondent no.2 made charter of demand dated 24.08.2020 for 22 demands pertaining to their employment for all workmen including 61 regular workmen and 337 contractual workmen. The demand no.19 and 20 charter of demand related to workmen of contractor for regularization and raised of demand is for all the workman which includes regular workmen. It is submitted that after considering the report of partnership of Union which was produced before the Conciliation Officer, the Conciliation Officer came to the conclusion that dispute is in relation to on 398 workmen. It is further submitted that 398 workmen list was bifurcated in two parts that 337 workers were on contract and 61 regular workmen, that was bifurcated only for the purpose of considering the demand no.19 and 20 otherwise the dispute with regard to the other demands were in respect of workmen of Union i.e 398

workmen. As after hearing the representative of the petitioner company and the representative of workman of contractor, it was opined by the Conciliation Officer that dispute was related to both the categories and therefore, same was referred to Industrial Tribunal. It is submitted that role of the Conciliation Officer is limited and is empowered to call for the parties for discussion disputed matter and to make effort to settle the dispute and in the event that settlement is not possible he has to submit the failure report and reference the same for adjudication to Industrial Tribunal.

7.2. Learned AGP Ms.Surbhi Bhati further submits that the opinion has to form with regard to the existence of the industrial dispute and the appropriate authority cannot adjudicate the dispute on merits and the power lies with the Industrial Tribunal. It is submitted that by exercising that powers, the disputes was referred to the industrial tribunal for adjudication and the therefore, petitioner would have all his rights to raise legal submission including the grievance raised in the petition, however, at this stage it would be premature to entertain the petition by forming opinion that by referring the dispute the respondent no.3 has committed error. Submitting the same, learned AGP Ms.Bhati has requested not to entrain present petition and to dismissed the same.

8. Considering the rival submissions raised by the learned advocates for the respective parties, the moot question arising for consideration is that whether respondent no.3 contractor of labour has committed error in referring the dispute which relates to contractual employees as well as employees to the Industrial Tribunal.

9. Certain undisputed facts which are required to be considered for adjudicating the present petition are as follows:

9.1. The dispute is as respondent no.2 Union who send charter of demand on 24.08.2020, pertains to the service condition of the employees, was not entertained the Union has approached to the Conciliation Officer and Assistant Labour Commissioner, Vadodara requesting to intervene in the matter and start conciliation process. Conciliation Officer has issued notice on 17.10.2020 for preliminary discussion to the petitioner company. The company was asked to remain present on 02.11.2020. Admittedly, the company did not remain present. Therefore, proceedings were adjourned on 23.11.2020 and 01.12.2020, on both these dates no one remained present on behalf of the company. Therefore, Conciliation Officer has admitted the matter, on 3.12.2020 and notice was issued asking the company to remain present on 16.12.2020, on 16.12.2020, the representative of the company namely Mr Vishal Taylor, Joint Manager, HR remained present and submitted that the demands pertain to contract labour and all three contractors were terminated. Therefore, no question arise for raising the demands however, neither any adjournment applications nor any written statements were filed by the company, nor any evidence was adduced before the Conciliation Officer. Considering the submissions, the Conciliation Officers comes to the conclusion that there is no scope of settlement. Therefore the failure

report submitted under section 12(4) of the Act.

9.2. The main grievance of the company is that proceedings were paid for 337 workmen in Conciliation Case No.220 of 2020, the reference for adjudication before the tribunal was made for 398 workmen. If at this stage, charter of demand is perused, which was sent to the company, it refers that in addition to the regular employees, the charter of demand is also with respect to the workmen treated as a employee of so called labour contractor, except demand no.19 and 20 all demands were pertaining to the member of Union, including regular as well as contractual employees so far as demand no.19 and 20, the contractual employees are seeking the regularization and claiming to be the employees of principal employer.

9.3. This Court is of the view that whether they are entitled for the claim, raise or not is the subject matter for the adjudication before the learned Tribunal. The employees can put forth its case in defence and lead evidence in support of such case to prove that they are contract labourers and they have no right to be absorbed as a permanent employee of the company. The terms of the reference in the context of demand do not appear to have, in any way, precluded the company from putting forth its case that they are contract labourers and cannot be absorbed as a permanent employee of the company. The Conciliation Officer after considering the submissions finds that an industrial dispute exist and by exercising the power under section 10(1) of the Act, refers the dispute to the concerned Authority for adjudication. It is a kind of administrative function of the authority of the government, once there is a denial to the demands of the workmen by the company and in connection with such demands, when dispute exist, reference made could not be said to be invalid merely because demands pertain to regular employees as well as contractual employees. It is submitted by the representative of the company before the Conciliation Officers that all three contractors were terminated. Therefore, also Conciliation Officers has not committed any error in referring the dispute for education.

9.4. The contention with regard to non-joining of the contractor is concerned, this Court is of the view that if the Tribunal at the time of adjudicating the dispute deem fit to join the contractor as a party, then the contractor can very well join before the Tribunal but that would certainly not be ground for concluding that learned Commissioner has committed error in referring the dispute for adjudication.

10. The judgment which was relied by the learned advocate Mr.Patel in the case of National Engineering Versus State of Rajasthan reported in 2000 1 SCC 371 was the case wherein, during the existence of settlement descent minority Union, which was not eligible for registration as a representative Union raised the dispute. In that circumstances, it was held that it would futile to allow the reference to continue and therefore, order of reference was set aside. At this stage judgement which was relied by the learned advocate in the case of State of Madras versus C.P.Sarathy reported in 1952 SCC 606 is required to be referred,

which is reproduced hereinbelow:

"13. It was next contended that the reference was not competent as it was too vague and general in its terms containing no specification of the disputes or of the parties between whom the disputes arose. Stress was laid on the definite article in clause (c) and it was said that the Government should crystallise the disputes before referring them to a Tribunal under Section 10(1) of the Act. Failure to do so vitiated the proceedings and the resulting award. In upholding this objection, Govinda Menon, J., who dealt with it in greater detail in his judgment, said, "Secondly, it is contended that the reference does not specify the dispute at all. What is stated in the reference is that an industrial dispute has arisen between the workers and the management of the cinema talkies in the City of Madras in respect of certain matters. Awards based on similar references have been the subject of consideration in this Court recently. In *T.D. Ramayya Pantulu v. Kutty & Rao (Engineer) Ltd.* Horwill and Rajagopalan, JJ. had to consider an award based on similar references without specifying what the dispute was." After referring to the decision of the Federal Court in *India Paper Pulp Co. Ltd. v. Workers' Union*, and pointing out that though the judgment of the Federal Court was delivered on 30-3-1949, it was not referred to by the High Court in *Kandan Textile Ltd. v. Industrial Tribunal* which was decided on 26-8-1949, the learned Judge expressed the view that "the trend of decisions of this Court exemplified in the cases referred to by me above has not been overruled by "their Lordships" of the Federal Court." Basheer Ahmed Sayeed, 1., however, sought to distinguish the decision of the Federal Court on the facts of that case, remarking "that a reading of the order of reference that was the subject-matter of the Federal Court decision conveys a clear idea as to a definite dispute, its nature and existence and the parties between whom the dispute existed." It is, however, clear from the order of reference which is fully extracted in the judgment that it did not mention what the particular dispute was, and it was in repelling the objection based on that omission that Kania, C.J. said: (*India Paper Pulp Co. Ltd. case*, FCR p. 355)

"...The section does not require that the particular dispute should be mentioned in the order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 10 of the Act however requires a reference of the dispute to the Tribunal. The court has to read the order as a whole and determine whether in effect the order makes such a reference."

14. This is, however, not to say that the Government will be justified in making a reference under Section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry, and it is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But, it must be remembered that in making a reference under Section

10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view."

11. Considering overall circumstances, this Court is of the view that petition filed by the petitioner challenging the order of reference is required to be dismissed and order passed by the Conciliation Officer under section 10, read with section 12(5) is required to be upheld.

12. It is open for both the parties to raise all their contentions before the learned Tribunal who shall examine the same independently without being influenced by observations made herein.

13. It is clarified that Tribunal may examine the case without being influenced by the order and any observations made by this Court.

14. Resultantly, this petition being devoid of merits, is rejected. Rule is discharged.