

(2004) 09 AHC CK 0263
In the Allahabad High Court
Case No : C.M.W.P. No. 45538 of 2003

National Textile Corporation Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 17, 2, 25, 39, 4K

Citation : (2005) 5 AWC 4431

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : V.B. Singh and Vijay Sinha, for the Appellant; G.C. Gahrana and S.C., for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri V. B. Singh, learned senior advocate, assisted by Sri Vijay Sinha, for the Petitioners, Sri G. C. Gahrana, learned Counsel appearing for Respondent No. 3 and learned standing counsel.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the parties, writ petition is being finally decided.

3. By this writ petition, the Petitioners have prayed for quashing the reference order dated 12th November, 1998, order dated 17th July 2000, order dated 19th September 2001 passed by Presiding Officer, Industrial Tribunal and the award dated 27th September 2002.

4. Brief facts of the case relevant for deciding the dispute between the parties are ; Petitioner No. 1, National Textile Corporation (U.P.) Limited, Kanpur is subsidiary corporation of National Textile Corporation, New Delhi created under Sick Textile Undertaking (Nationalisation) Act, 1974. National Textile Corporation (U.P.) is a Central Government undertaking and is holding company of National Textile Corporation, New Delhi. Petitioner No. 2, Raibareilly Textile Mills, is one of

the subsidiary of Petitioner No. 1. The National Textile Corporation (U.P.) Limited has been declared sick by the Board of Industrial and Financial Reconstruction (B.I.F.R.) on 10th March, 1993. With effect from 28th February, 1997 the production has been completely stopped by Petitioner No. 2. In February, 1997 Petitioner No. 2 effected layoff of its 354 employees. The State Government vide reference order dated 12th November, 1998 made a reference u/s 4K of U.P. Industrial Disputes Act, 1947 to the Industrial Tribunal, U.P. on which Adjudication Case No. 147 of 1998 was registered. The reference was to the effect as to whether the action of the employers in laying-off their 354 employees with effect from 28th February, 1997, which is continuing till today, was valid or not and if not to what relief the workmen are entitled. The workmen filed their written statement and management also filed its written statement. The management in its written statement took specific plea that the State of U.P. is not the appropriate Government for making a reference and the appropriate Government competent to make reference is Central Government. A prayer was made by the management that the reference be rejected as without jurisdiction. In the written statement of the management it was also stated that Raibareilly Textile Mills is a Government of India public sector undertaking incorporated under the Companies Act, 1956 and is under the control of the Central Government. Relying on the judgment of Apex Court in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], it was stated that reference by the State Government was without jurisdiction.

5. The Presiding Officer, Industrial Tribunal passed order dated 17th July 2000 holding the reference maintainable. The management filed an application for reviewing the order dated 17th July 2000, which application too was rejected by the order dated 28th August 2001/19th September 2001. Management also filed another written statement stating that 295 employees have already taken voluntary retirement out of 354 employees, hence no dispute is left. The award was reserved. The management claims that a settlement has been entered with the workmen represented by Naim Akhtar, Secretary of the Union to the effect that workers will not press the reference since the matter has already been settled and voluntary retirement has already been taken. Application and affidavit is said to have been given to the industrial Tribunal. The industrial Tribunal, however, before the applications were submitted, prepared the award on 27th September 2002 and sent the same to the State Government which award was published on 16th June 2003. The industrial Tribunal vide its award held the layoff as illegal. The industrial Tribunal gave award that workmen are entitled to all the benefit with effect from 28th February, 1997 till their resignations were accepted. The award dated 27th September 2002 has been challenged by the management in this writ petition.

6. Sri V. B. Singh, senior advocate, appearing for the Petitioners, in support of the writ petition raised following submissions :

(i) The reference by the State Government u/s 4K of U.P. Industrial Disputes Act,

1947 referring the industrial dispute to the Industrial Tribunal, U.P. was without jurisdiction since the appropriate Government in accordance with the provisions of Industrial Disputes Act, 1947 is the Central Government. Reliance has been placed by the Petitioners on the judgment of the Apex Court dated 8th July 2002 in Civil Appeal No. 3659 of 2002, Hindustan Aeronautics Ltd. and Anr. v. Hindustan Aeronautics Canteen K. Sangh and Ors.), and on judgment of a learned single Judge of this Court in Suti Mills Mazdoor Union and Another Vs. Union of India (UOI) and Others, .

(ii) 295 workmen out of 354 have already accepted the V.R.S. by submitting declaration that they shall not claim any payment from management other than those admissible under the V.R.S. The submission is that after accepting the V.R.S. any claim regarding layoff could not have been pressed and the Industrial Tribunal committed error in allowing the application of layoff. Reliance has been placed on judgment of Apex Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, .

(iii) The industrial Tribunal erred in observing that declaration of the workmen that they will not claim any other amount except the amount under the V.R.S. is, against the public policy.

7. Sri G. C. Gahrana, learned Counsel appearing for Respondent No. 3, refuting the submissions of the Petitioners' counsel, contended that appropriate Government for making the reference was the State Government. It was contended by Sri Gahrana that mere acceptance of the V.R.S. does not disentitle the workmen to claim their lawful amount pursuant to declaration that layoff was illegal. He contended that acceptance of V.R.S. does not preclude the workmen to claim their rights. He further contended that scope of review of the award by this Court is very limited. The findings recorded in the award cannot be interfered with. Reliance has been placed upon Dalip Singh Vs. State of Rajasthan, ; U.P. State Electricity Board and Another Vs. Presiding Officer, Labour Court and Another, ; P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, ; M.P. Mittal Vs. State of Haryana and Others, and Nagar Nigam Vs. Presiding Officer, Labour Court and Others, .

8. I have considered the submissions of counsel for both the parties and perused the record.

9. The first submission, which has been raised by counsel for the Petitioners, is the competence of the State Government to refer the dispute to the Industrial Tribunal, Uttar Pradesh. In the written statement filed before the industrial Tribunal by the management, it was stated that Raibareilly Textile Mills is a Government of India Public Sector undertaking incorporated under the Companies Act, 1956 and is under the control of the Central Government. It is categorically stated in the writ petition that Central Government holds 95.83% share of National Textiles Corporation (U.P.) Limited. It has further been stated that National Textile Corporation (U.P.) Limited has moved an application before

the Central Government seeking permission for closure. The application moved by National Textile Corporation (U.P.) Limited seeking permission of the Central Government u/s 25-O of Industrial Disputes Act, 1947 was challenged in this Court on the ground that Central Government is not the appropriate Government. The said writ petition was dismissed by this Court vide its judgment in Suti Mills Mazdoor Union's case (supra). This Court in the above judgment has taken note that Central Government provides all financial assistance to the N.T.C. (U.P.) Ltd. for running of its business and provides finances including wages to the employees. All the 9 mills which are proposed to be closed are lying closed for last 5 to 10 years and Central Government has been paying idle wages to the workmen from the budget of the Government of India. It was also observed in the judgment that National Textile Corporation Limited is holding company of the National Textile Corporation (U.P.) Limited which is in overall control of the affairs of the National Textile Corporation (U.P.) Limited. Following was observed in paragraph 13 of the said judgment : 13. Viewed in this background, it is seen that the parent company, i.e., National Textile Corporation Limited which is the parent company controls every movement of its subsidiary National Textile Corporation (U.P.) Limited which does what the parent company says. Thus, they cannot be treated separately. It is not disputed that 100% shares of the parent company are held by the Central Government. Thus, for the present purposes, it can be held that in fact more than 51% shares of the National Textile Corporation (U.P.) Limited are held by the Central Government. It is covered u/s 25(L)(b)(i) of the Section 25-O of the Central Act is maintainable.

10. Specific plea in paragraph 30 of the writ petition is that Central Government is appropriate authority as it holds 95.83% share of N.T.C. (U.P.) Limited. The State Government does not have any financial or administrative control over N.T.C. (U.P.) Ltd. Replying paragraph 30 of the writ petition, in paragraph 22 of the counter-affidavit only this much has been stated : 22. That the contents of paragraph Nos. 22, 23, 24 and 25 of the writ petition are not admitted as they are written. As a matter of fact, the employers/ Petitioners compelled the Secretary, Naeem Akhtar, to sign an agreement/settlement stating that the dispute has been resolved between them otherwise his payment will not be made. As a matter of fact, the alleged agreement/settlement is concocted and farzi inasmuch as the alleged agreement contains the sign of Mohammad Hasan and Shanker Dayal Dixit as witnesses on behalf of workmen and all these persons have categorically denied their signatures on the agreement. They have clearly stated in their affidavit that they were not party to the agreement/settlement. They never signed on such agreement before any authority. Both the witnesses are filing their affidavit before this Hon'ble Court which are annexed herewith as Annexure-CA-1 and Annexure-CA-2 to this affidavit. It may further be noted that the alleged settlement of Naeem Akhtar is alleged to have been filed after the date of the award which is illegal and cannot be looked into.

11. The Apex Court in its judgment in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., had

occasion to consider the import of the word "appropriate Government" as defined in Section 2(1)(a) of Contract Labour (Regulation and Abolition) Act, 1970. The definition of the word "appropriate Government" u/s 2(1)(a) of the said Act is on similar line. The Apex Court after considering all earlier cases laid down following in paragraph 125 :

"125. The upshot of the above discussion is outlined thus :

(1) (a) Before 28.1.1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the C.L.R.A. Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government ; otherwise in relation to any other establishment the Government of the State in which the establishment was situated would be the appropriate Government.

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in Clause (a) of Section 2 of the Industrial Disputes Act ; if (i) the Central Government company/ undertaking concerned or any undertaking concerned is included therein as co-nominee, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company ; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government ; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

....

12. The judgment of the Apex Court relied by counsel for the Petitioners in Hindustan Aeronautics Ltd. case (supra), do support the contention raised by counsel for the Petitioners. Relying on Constitution Bench judgment of Apex Court in Steel Authority of India's case (supra), following has been laid down : The question that arises for consideration in this case is, whether the High Court is justified in holding that the State Government is the "Appropriate Government" under the provisions of the relevant Act. The Constitution Bench recently has considered the relevant provisions of the Contract Labour Regulation Act in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , and has come to the conclusion that the "Appropriate Government" will be the Government which exercises control and authority over the concerned organisation. It is undisputed that the Hindustan Aeronautics Ltd. is an undertaking of the Central Government and it is

the Central Government which exercises full control over the same. Issuance of licence by the State Government is no criteria to come to a conclusion that the State Government would be the "Appropriate Government". The impugned judgment of the High Court therefore is, on the fact of it, erroneous in view of the Constitution Bench decision of this Court referred to earlier. We, therefore, set aside the impugned judgment of the High Court and hold that the Central Government is the "Appropriate Government".

13. In the counter-affidavit a plea has sought to be raised by the Respondents that plea of the management that appropriate Government is Central Government was rejected by the Presiding Officer vide its order dated 17.7.2000 which order was not challenged by the management and they acquiesced themselves to the jurisdiction of the industrial Tribunal. By order dated 17.7.2000 passed by the Presiding Officer rejected the application of the management for declaring the reference as without jurisdiction. After rejecting the application, the Tribunal proceeded to decide the matter on merits and gave the award on 27.9.2002. In paragraph 4 of the award also, the Tribunal has noted the plea of the employer that State Government is not the "appropriate Government" for making reference. The contention of Respondent No. 2 that employer did not challenge the order of the Presiding Officer dated 17.7.2000 rejecting the application of the employer, hence they have to be treated having acquiesced to the order, cannot be accepted. It is well-settled that it is not necessary for a party to challenge all interlocutory orders passed during pendency of proceeding and while challenging the final order in the higher Court all pleas can be taken. There is no question of acquiescence by the employer in submitting to the jurisdiction of the Tribunal after rejection of their application moreso when at the time of final award also plea was raised by the employer.

14. The order of Presiding Officer dated 17th July 2000 by which the plea raised by the employer that State Government is not the appropriate Government has also been challenged in this writ petition. A copy of the said order has been annexed as Annexure-5 to the writ petition. The position of law as laid down by the Apex Court in Air India Statutory Corporation case (supra) and Hindutan Aeronautics Ltd. case (supra) in Writ Petition 13936 of 1995 decided on 29.9.1997 was not challenged before the industrial Tribunal. The Respondent rather contended that reference has been made by the State Government in exercise of delegated powers of the Central Government u/s 39 of the Industrial Dispute Act, 1947. Section 39 of the Industrial Disputes Act, 1947 is quoted below : 39. Delegation of powers.-The appropriate Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act or Rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,-

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State

Government, or by such officer or authority subordinate to the State Government as may be specified in the notification ; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

15. Reliance has been placed on notification dated 3rd July, 1998 of which notification following extract was quoted by the Presiding Officer in the order dated 17th July 2000, "In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of the 1947) Central Government hereby directs that all the powers exercisable by it under that Act and the Rules made thereunder shall...be exercisable also by the State Government". The Presiding Officer held that since in the present case reference was made after the notification dated 3rd July, 1998, the State Government was competent to refer the matter. After the order dated 17th July 2000, a review application was immediately filed by the employer in which notification dated 3rd July, 1998 was not denied, rather it was stated that the State Government can exercise delegated power only with regard to references which could have been made by the Central Government under the Industrial Disputes Act, 1947. It was stated in paragraph 5 that reference could have been made to the industrial Tribunal constituted under the Industrial Disputes Act, 1947 by the State Government. In paragraph 6 of the application, it was specifically stated that the State Government has referred the dispute to the industrial Tribunal constituted by the State Government under the U.P. Industrial Disputes Act, 1947. From the materials on the record, it is clear that the reference was made by the State Government vide its order dated 12th November, 1998 exercising jurisdiction u/s 4K of the U.P. Industrial Disputes Act, 1947. Delegated power u/s 39 of Industrial Disputes Act, 1947, the Central Government, which is the appropriate Government for the purposes of present case, could have made a reference to a Court constituted in accordance with Section 17A of the Industrial Disputes Act, 1947. The industrial Tribunal to which the reference was made was a industrial Tribunal constituted for Uttar Pradesh under the U.P. Industrial Disputes Act, 1947. The State Government in the referring order itself referred to its power u/s 4K of U.P. Industrial Disputes Act, 1947. Thus, the stand taken by the Respondents that u/s 39, the State Government can exercise delegated power of the Central Government while making reference cannot be accepted. In the present case, the State Government did not make reference exercising delegated power of the Central Government u/s 39 of the Industrial Disputes Act, 1947, rather it exercised its jurisdiction u/s 4K of U.P. Industrial Disputes Act, 1947. The appropriate Government in the present case being the Central Government, as observed above, the reference could have been made only by the Central Government. The plea of the Respondents that State Government exercised the delegated power u/s 39 of Industrial Disputes Act, 1947 which found favour with the Presiding Officer, Industrial Tribunal, is unsustainable. The reference made to the industrial Tribunal itself being incompetent, the award falls on the ground due

to the said reason. It having been found that the reference itself was incompetent, it is not necessary, for this case, to consider and decide other submissions raised by the counsel for the Petitioners. This writ petition deserves to be allowed on the decision taken on the first submission of counsel for the Petitioners.

16. In result, the writ petition is allowed, the reference order and consequential proceedings thereon including the award dated 27th September 2002 are quashed.

17. Parties shall bear their own costs.