

(1959) 07 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 22 of 1959

N.N. Chakravarty, I. A. S. (Retd.)	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 03-07-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(4), 33C, 7

Citation : (1959) 07 GAU CK 0002

Hon'ble Judges : C.P. Sinha, C.J.;G. Mehrotra, J

Bench : Division Bench

Advocate : K.D. Chatterjee, P. Bhattacharjee and B.S. Guha, for the Appellant;
N.M. Lahiri and D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sinha, C.J.—This is an application under Arts. 226 and 227 of the Constitution for a writ of mandamus against Opposite Parties Nos. 1 and 2 commanding them not to give effect to the Notifications No. GLR. 7/51/146 and GLR. 1/51/147 dated 28-8-1957, and to issue a writ of mandamus to Opposite Party No. 2 commanding him not to proceed with the Reference (being Reference No. 79 of 1957), as amended by the said notifications and to issue an appropriate writ quashing the said Notifications and to issue such directions to Opposite Parties Nos. 1 and 2 as to this Court might appear fit and proper.

2. The facts giving rise to this application may be stated briefly as follows: The Petitioner and one Sri Baidyanath Mookerjee are proprietors of a tea garden in the district of Cachar known as Eraligool Tea Estate, each owning a moiety share. For sometime past, the Indian Tea Employees' Union, Silchar (opposite party No. 3) had been agitating that the scale of pay as recommended by the Indian Tea Association, which is an Association of the employers in the tea gardens in the State, should be given effect to in all the gardens, in the district of Cachar.

By Notification No. GLR. 1/51 dated 11-6-1957, the Assam Government, which will be hereafter referred to as the State Government appointed Opposite Party No. 2, as Presiding Officer of an Industrial Tribunal u/s 7A of the Industrial Disputes Act, 1947, for adjudication of the dispute referred to therein between the management of the tea gardens mentioned in Appendix I thereof including the tea estate known as Eraligool Tea Estate, belonging to the Petitioner and the said Sri Baidyanath Mookerji on the one hand and the Indian Tea Employees' Union, Silchar and the Assam Cha Karmachari Sangha, Dibrugarh on the other. This Notification was made in pursuance of the provisions of Section 10 of the Industrial Disputes Act, 1947, hereafter to be referred to as the Act and the dispute referred to was as follows:

(1) Whether the demand of the staff for introduction of Indian Tea Association scale of pay is justified.

(2) If not, what should be the scale of pay for the staff?

Thereafter, by Notifications No. GLR. 1/51/146 and GLR. 1/51/147 dated 28-8-1957, the State Government altered the reference by substituting in place of the dispute originally specified other issues different in scope and character. Copies of the said Notifications are annexed to the petition as Annexure "B." The former Notification is also annexed to the application as Annexure "A." By the subsequent Notification, namely GLR. 1/51/146 dated 28-8-1957, the following issues were substituted in place of the issues mentioned in the previous Notification:

(1) Whether the demand of the staff for introduction of Indian Tea Association, Scale of pay, other allowances and benefits is justified.

(2) If not, what should be the scale of pay, etc. for the staff

(3) From what date the scale of pay, etc. fixed by the Tribunal should be given effect to.

(4) What should be the quantum of bonus for the staff for the years 1953 and 1954?

By Notification No. GLR /1/51/147 dated 28-8-1957, some more parties were added to the Reference.

3. It is said that the Opposite Party No. 2 having registered the case as Reference No. 79 of 1957, is proceeding to adjudicate upon the issues referred to by the State Government and that witnesses are being examined and evidence is being led upon various matters outside the scope of the issues originally referred to the Tribunal by the Notification dated 11-6-1957, such as supply of cereals, personal allowance, leave with pay, travelling allowance, servant allowance promotion etc.

4. On these facts, it is said that the State Government having issued the Notification dated 11-6-1957, referring the issues mentioned therein to the

Tribunal, it had no jurisdiction to alter amend or substitute the previous issues by adding to them or enlarging their scope by the subsequent Notifications, as mentioned in Annexure "B" and it is also said that the State Government having once determined what were the disputes between the parties and referred the same for adjudication to the Tribunal, and the Tribunal having come into existence by the Notification of the 11th June, 1957, it is no longer open to the State Government to revise their opinion regarding the nature and ambit of the issues involved in that dispute and in that view of the matter, it is pointed out that the subsequent Notifications of 28-8-1957 substituting the four issues mentioned therein in place of the two issues specified in the Notification of the 11th June, 1957, have in effect superseded the earlier Notification and are illegal and ultra vires and that the State Government had no jurisdiction to enlarge the issues mentioned in the first Notification.

5. Affidavit-in-opposition has been filed by Opposite Party No. 3, the Indian Tea Employees' opinion, Silchar, and apart from controverting the contention of the Petitioner that the State Government had no power to amend or enlarge the scope of the issues mentioned in the first Notification by a subsequent one, it has taken two preliminary points to the following effect -- (1) That the other owner of the tea garden in question, namely Sri Baidyanath Mookerji, not having joined the application or having been made party to it, the application is liable to be dismissed on that ground; (2) that the application is not maintainable, as the Assam Cha Karmachari Sangh has not been impleaded as a party to the proceeding, although this Assam Cha Karmachari Sangh was a party in the reference made by the State Government to the Tribunal. It is also stated that the State Government by Notification No. GLR. 1/51 dated 10-9-1958, deleted the fourth issue mentioned in the second Notification.

6. Affidavit-in-opposition was also filed on behalf of Opposite Parties 1 and 2 and it is stated that what the Government did by the subsequent Notification was merely to amend the original reference by adding certain new items thereto without making another independent reference separately about the matters so added and that could not be said to be the cancellation, supersession or substitution and it is claimed that the State Government had jurisdiction either to make independent separate references or consolidate the same by enlarging the original issues for the convenience and good of all concerned.

7. Thereafter, the Petitioner filed another application on 20-5-1959, for adding the said Sri Baidyanath Mookerji and the Assam Cha Karmachari Sangh, Dibrugarh, as parties to the application. It is also stated that the Petitioner was not aware of the third Notification of 10-9-1958, whereby issue No. 4 in the second Notification dated 28-8-1957, was deleted.

8. When this matter was taken up for hearing, Mr. Lahiri, appearing on behalf of Respondent No. 3 raised the preliminary objection about the maintainability of the application on the ground of non-joinder of necessary parties to the application and further submitted that the application for addition of Sri

Baidyanath Mookerjee and Assam Cha Karmachari Sangh, Dibrugarh, to the application being very much belated, ought not to be allowed.

9. The Court, after having heard the parties on the preliminary objection, allowed Mr. Chatterjee to make submissions on the merits of the case and as the Court was of opinion that the application was liable to be dismissed on merits, it would serve no useful purpose in considering the preliminary objection or the application of the Petitioner for addition of parties.

10. The question is whether the State Government acted within its powers under the Act in substituting the previous issues by adding and amplifying the said issues by a subsequent Notification and whether the subsequent Notification, namely, the Notification dated 28-8-1957, can be construed as cancelling the previous Notification of 11-6-1957.

11. The main contention of Mr. Chatterjee, on behalf of the Petitioner, is that the State Government had no right to cancel its previous. Notification issued u/s 10(1) of the Act. and that in the present case the second Notification of the 28th August, 1957, in effect cancelled the previous one, which the State Government had no right to do. The sheet-anchor of the learned Counsel in support of his contention is the case reported as The State of Bihar Vs. D.N. Ganguly and Others,

The facts in that case, however, were entirely different. What had happened in that case was that on the 8th October, 1954, the Government of Bihar had referred an industrial dispute between the management of the Bata Shoe Co. Ltd., Dighaghat, Patna, and their 31 workmen mentioned in Annexure "A" in exercise of the powers conferred on the State Government by Section 7 read with Section 10(1) of the Act and for the adjudication of the dispute, an Industrial Tribunal with one Mr. Ali Hassan as the sole member, was constituted. This was reference No. 10 of 1954. Thereafter, on 15-1-1955, a similar industrial dispute between the said management and its 29 other workmen was referred by the Government of Bihar to the same Tribunal.

This was reference No. 1 of 1956. While the proceedings in respect of the two references were pending before the Tribunal, the said Government issued a third notification dated 17-9-1955, by which it purported to supersede the two earlier Notifications, to combine the said two disputes into one dispute, to implead the two sets of workmen involved in the two disputes together and to add another, namely Bata Mazdoor Union, to the dispute and to refer it to the adjudication of the Industrial Tribunal of Mr. Ali Hassan. It was on these facts held in that case that the State Government had no power of rescinding or cancelling the original order and in so holding, the following observations were made:

Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made u/s 10(1). If on the representation made by the employer or his workmen the appropriate Government considers

the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference u/s 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made u/s 10(1), which the Appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the Appellant is conceded to the appropriate Government, it would be open to the appropriate Government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate Government u/s 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; ...We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Industrial Dispute Act.

While discussing the several cases placed before their lordships, their Lordships made the following further observations in regard to the case reported in *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*,

In this case the Madras Government had purported to amend the reference made by it u/s 10 of the Act and the validity of this amendment was challenged before the court. This objection was repelled on the ground that it would be open to the Government to make an independent reference concerning any matter not covered by the previous reference. That it took the form of an amendment to the existing reference and not additional reference is a mere technicality which does not merit any interference in the writ proceeding. The objection was one of form and was without substance. It would thus appear that the question before the court was whether the appropriate government can amend the reference originally made u/s 10 so far as the new matters not covered by the original reference are concerned and the court held that what the appropriate government could have achieved by making an independent reference, it sought to do by amending the original reference itself. This decision would not assist the Appellant because in the present case we are not considering the power of the government to amend, or add to, a reference made u/s 10(1). Our present decision is confined to the narrow question as to whether an order of reference made by the appropriate government u/s 10(1) can be subsequently cancelled or superseded by it.

After making these observations, their Lordships observed that the finding of the Patna High Court to the effect that the Notification issued by the Appellant cancelling the first two Notifications was invalid and ultra vires, was correct. In

my opinion, the facts of the Supreme Court case had no Similarity to the facts in the present case. As pointed out in that case, the Government of Bihar had superseded the two previous references, thus cancelling the jurisdiction of the Tribunal, which had legally vested in it. In the present case, by no stretch of imagination, it can be said that the State Government has cancelled its previous Notification of 11-6-1957.

What it has done is that by the second Notification, the issues which were framed by the Government for reference to the Tribunal by its June. 1957. Notification, have been amplified and added to. This could not, in my opinion, amount to supersession of the previous Notification or cancellation of the jurisdiction of the Tribunal under the first Notification, which still continued to exist in that Tribunal. The only difference made by the second Notification was, as I have already said, that the issues of the first Notification were amplified.

In the Supreme Court case, relying upon Section 21 of the General Clauses Act, it was contended by the State that the power to issue fresh notification included the power to cancel it. This contention was repelled. But the Supreme Court did not lay down that the power to issue fresh notification does not include power to amend or amplify previous notification. This will be clear from the following observation in the judgment of the Supreme Court:

This decision would not assist the Appellant because in the present case, we are not considering the power of the Government to amend or add to a reference made u/s 10(1).

It was argued by Mr. Chatterjee that no doubt the Supreme Court case was not a case of amendment, but the reasoning on which that decision is based applies with equal force to the case of amendment. Mainly, the Supreme Court decision was based on the ground that if power of cancellation is conceded to the Government, it will be open to the Government to terminate the reference at any stage which will be inconsistent with the purpose and the scheme of the Act. No such consequence will follow if the power to amend is conceded to the Government. Section 21 of the General Clauses Act embodies a rule of construction and there is no bar to adopt the rule of construction embodied in Section 21 in so far as it is not inconsistent with the Act and is not likely to defeat the purpose of the Act.

The next line of argument of Mr. Chatterjee was that once the State Government having formed an opinion about the existence of a dispute between the workmen and its employer, it has to refer the whole of the dispute and cannot do so piecemeal. It was conceded that the Government is entitled to refer a fresh and distinct dispute, but it is argued that any incidental auxiliary dispute to the one already referred cannot be referred again by means of a fresh notification. We find nothing in Section 10 of the Act to warrant such an interpretation. The State Government having once formed an opinion, does not become functus officio. There is no bar to the State Government referring disputes piecemeal having

regard to the exigencies of the situation. No authority has been placed before us by the learned Counsel where it has been held that on facts similar to the present case, it was held that the subsequent Notification amounted to cancelling the first notification. Section 10 of the Act, the relevant portion of it, should now be read:

....

(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.

These two sub-sections of Section 10 provide that the Labour Court or the Tribunal or the National Tribunal to which a reference has been made by the appropriate Government "shall confine its adjudication to those points and matters incidental thereto." This gives power to the appropriate Court or Tribunal to confine its adjudication to the points referred and also to matters, which might be incidental to those points (sub-cl. 4). Sub-cl. (5) confers jurisdiction on the appropriate Government to include in the reference any other establishment, group or class of establishments of a similar nature as might be interested in, or affected by such disputes.

In the one case, the jurisdiction of the Labour Court and Tribunal extends to matters not referred to, but matters, which might be incidental to the points referred and by the order, the appropriate Government is authorised to include in the reference, establishment, group or class of establishments, which had not been referred to by the previous reference. In the present case, we are not concerned with Sub-clause (5), but Sub-clause (4) may be relevant. The first reference, as I have already said, contained two issues; the second one was consequential on the findings of the first issue and the first issue was whether the demand of the Staff for introduction of Indian Tea Association scale of pay was justified. By the second notification, the first issue has been amplified by adding to it "other allowances and benefits;" and in the second issue also, a

consequential change has been made by the introduction of the word etc. after the word "pay." The third issue, which did not find a place in the first notification was to the following effect:

From what date the scale of pay, etc., fixed by the Tribunal should be given effect to.

I am inclined to take the view that even if there had been no second reference, the matters that have been amplified or added to the first reference, are merely incidental and consequential, and the Tribunal could have been justified under the provisions of Sub-clause (4) of Section 10 to give its findings on these matters.

12. Even if these additional or amplified matters could not have been dealt with by the Tribunal while trying the issues referred to it by the first notification, the State Government was entitled, as has been rightly conceded by the learned Counsel to issue a fresh notification including the fresh issues and referring the same to the same Tribunal as additional issues and the State Government could have been perfectly within its rights to do so.

13. Emphasis was laid by the learned Counsel on the word "substitute" occurring in the first paragraph of the second Notification, which runs as follows:

Please substitute the following issues in place of the issues framed in this Department's Notification No. GLR. 1/51 dated 11-6-1957, published in Assam Gazette, dated 19-6-1957:

It is submitted that the word "substitute" is equivalent to the word "cancellation." I am unable to accept this contention. In some cases, I agree that the word "substitute" may be employed to mean replacement by cancellation of the previous one. It might also mean the replacement of one by another, which might be equal to it, but differently expressed, as mentioned in the Chamber's Twentieth Century Dictionary. In the present case the substitution is by adding to the previous issues, the previous issues remaining the same. Mr. Chatterjee contended that in the Supreme Court case also, the effect of the third reference was to replace the old reference after consolidating the parties and points at issue and not to put an end to the reference and yet the Supreme Court held the third reference invalid.

In the Supreme Court case, the first reference was terminated and a fresh reference arose out of the third notification, but in the present case the previous reference continues, only the scope of inquiry has been enlarged. Moreover, in the Supreme Court case it was assumed that the third notification cancelled the previous notification. In what circumstances the second notification will amount to cancellation of the previous notification was not canvassed before the Supreme Court.

14. On behalf of the State, Mr. Medhi, the Government Advocate referred to the case of Sudhindra Kumar Deb and Others Vs. The State of Assam and Others,

and attention of the Court was drawn to the passage occurring at p. 4 of the Reports, which is to the following effect:

The principle which emerges from all these decisions is that in appropriate cases, Government may have the power to cancel or modify a reference made to the Labour Court or Tribunal provided such reference or modification does not defeat the provisions of the Industrial Disputes Act itself and nullify its purpose. The order of reference or cancellation, though administrative, is justiciable and in appropriate cases a writ may lie against those orders.

After making these observations, His Lordship the Chief Justice held that in that particular case, the cancellation of the previous Notification was not permissible, as it was calculated to defeat the provisions of Section 33C of the Act. In my opinion, the Supreme Court having considered the relevant sections of the Act and having come to the conclusion that the appropriate Government has no power to cancel, it is not necessary for me to consider these observations made in this case. Reference was also made to the case of *Rivers Steam Navigation Co. Ltd. v. Radhanath Hazarika* Civil Rule No. 181 of 1956, decided by this Court on the 18th July 1957, where His Lordship the Chief Justice observed as follows after referring to the case of (S) AIR 1955 Mad 45:

If it were open to Government to make u/s 10 an independent reference concerning any matter not covered by the previous reference, the fact that it took the form of an amendment to the existing reference and not an additional reference was a mere technicality which did not merit any consideration.

I respectfully agree with His Lordship's observations.

15. Mr. Lahiri, learned Counsel on behalf of Respondent No. 3 has referred to certain cases and I propose now to deal with them. The decision in AIR 1949 148 (Federal Court) does not appear to be much in point. The only relevant fact is that while referring the dispute in general to the Tribunal, the dispute was not particularised and the Court held that Section 10(1) of the Act did not require that the particular dispute should be mentioned in the order and that it was sufficient if the existence of a dispute and the fact that the dispute was referred to the Tribunal were clear from the order. In *State of Madras Vs. C.P. Sarathy and Another*, it is again held that the reference u/s 10(1)(c) was not incompetent merely because, it was made in general terms and the disputes were not particularised.

It was also held that while making a reference u/s 10(1) of the Act, the Government was merely doing an administrative act and the fact that it had to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function did not make it any the less administrative in character. The Court could not, therefore, canvass the order of reference closely to see if there was any material before the Government to support conclusion, as if it was a judicial or quasi-judicial determination. This again is not at all relevant.

16. Another case, namely Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union, was also referred to. This case, however, was considered in the latest decision of the Supreme Court in The State of Bihar Vs. D.N. Ganguly and Others, and no useful purpose will be served in considering that case over again. Another case, Minerva Mills Ltd. Vs. Their Workers, was referred to. This case again was considered by the Supreme Court in the decision reported in The State of Bihar Vs. D.N. Ganguly and Others, . In the case of J.B. Mangharam and Co., Gwalior v. K.B. Kher (S) AIR 1956 Mad 193, it was held that the language of Section 10(4) was wide enough to permit an amendment. It was pointed out that u/s 10 of the Act, the matter not covered by a reference can by an independent subsequent reference be referred to the Tribunal for adjudication and that if an additional reference could be made, then there was no reason why an amendment of the original reference should not be allowed, and for this proposition reliance was placed upon the case reported in (S) AIR 1955 Mad 45.

The decision in this case is in conformity with the decision to which I have arrived. Lastly, reference was made to the case of Tea Producing Co. of India Ltd. v. Shri Ram Labhaya Industrial Tribunal, Assam Civil Rule No. 10 of 1959 : AIR 1950 GAU 211, decided by this Court on the 6th of May, 1959. In this case, what happened was that the State Government on 24-2-1956, by a Notification, which will be hereinafter referred to as the first reference, had referred for adjudication to one Sri R. Hazarika, Member of the Industrial Tribunal, the industrial dispute alleged to have arisen between the management including the gardens owned by the Petitioner and a number of other gardens mentioned in the first column of the second schedule attached to the Notification as the first part and the Assam Cha Kamachari Sangha of the second part and certain issues were referred to that Tribunal for adjudication.

On 27-2-1957, the State Government had also constituted an Industrial Tribunal with Sri Ram Labhaya as its Presiding Officer u/s 7 of the Industrial Disputes Act, as was in force prior to the 10th March, 1957. After the 10th March, 1957. u/s 7A of the amended Industrial Disputes Act, the State Government constituted the said Tribunal with Sri Ram Labhaya as its Presiding Officer. On 31-5-1957, the Government by another notification, hereinafter to be referred to as the second notification, referred the present industrial dispute between the Petitioner and the Cachar Cha Sramik Union to Sri Ram Labhaya, Presiding Officer of the industrial Tribunal, constituted u/s 7A of the Act.

By the first notification, the dispute between the workers and 123 gardens was referred to Sri R. Hazarika. Sri R. Hazarika ceased to be a member of the Tribunal when the dispute of the workers and the 123 gardens was pending, and on 11-3-1957, Sri Ram Labhaya was appointed as the Presiding Officer of the Industrial Tribunal and the second notification of 31-5-1957, was issued by which the disputes between the various gardens and the workers which was the subject-matter of the first reference was split up into separate reference and one of the references related to the dispute between the present applicant and the opposite

party No. 4, a Trade Union.

The point argued before the Court was that the State Government was not competent to cancel the previous notification and on the facts of that case, it was held that the Tribunal before which the earlier reference were pending, had come to an end and the disputes had to be referred afresh to the Tribunal, which had been constituted under the amended Industrial Disputes Act. While referring to the decision of the Supreme Court reported in AIR 1958 SC 1018, it was observed that the decision in that case was confined to the narrow question of the appropriate Government's power u/s 10 of the Act to cancel or supersede its earlier reference and not to the power of the Government to issue fresh notification referring an industrial dispute to a new Tribunal, which was the subject-matter of an earlier reference to a Tribunal, which had ceased to exist, and in that view of the matter, their Lordships dismissed the application.

This case, therefore, on facts is entirely dissimilar. The only relevant observation for our purpose made in that case is that the Supreme Court decision in the case reported in AIR 1958 SC 1018 was a case where it was held that the appropriate Government had no right to cancel or supersede a reference once made but, if by efflux of time, the previous Tribunal had ceased to exist without coming to a decision on the dispute referred to it, certainly the dispute thereafter could be referred to another Tribunal by a fresh notification.

17. In my judgment, therefore, on the considerations mentioned above, there is no merit in this application and it must be dismissed with costs which I assess at Rs. 150/ -

G. Mehrotra, J.

18. I agree.