
(1971) 05 OHC CK 0012

In the Orissa High Court

North Orissa Workers' Union

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-05-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10A, 12

Citation : (1971) 2 LLJ 199

Hon'ble Judges : R.N. Misra, J;B.K. Patra, J

Bench : Division Bench

Judgement

B.K. Patra, J.—The petitioner is a Trade Union registered under the Trade Union Act having its head office at Rourkela. N. Roy, a member of this Union, was working as Crane Operator of the Hindustan Steel Limited. On 1-11-1963, Roy was dismissed from service of the Hindustan Steel Limited. The petitioner then raised a dispute before the District Labour Officer, Rourkela and he took up conciliation proceedings. On 26th January, 1964, the District Labour Officer submitted a factual report on the failure of the conciliation proceedings (Annexure-I), but indicated in the report that both parties had agreed to refer the issue for arbitration. Government received this report on 29-6-1964 (Annexure-II). On 28-5-1965, a memo of settlement (Annexure-III) arrived at agreeing to refer the dispute to the arbitration of Shri R.C. Misra, retired District Judge, was executed and was sent to the District Labour Officer (Annexure-IV). The State Government did not however publish the agreement in the Gazette as required by Sub-section (3) of Section 10A of the Industrial Disputes Act (hereinafter referred to as the Act), and in May, 1966, in exercise of their power under Sub-section (5) of Section 12 read with Clause (d) of Sub-section (1) of Section 10 of the Act referred the dispute to the Industrial Tribunal for adjudication. Meanwhile, the parties, as stated earlier, had referred the dispute to the arbitration of Shri R.C. Misra, but the latter expressed his inability to proceed with the matter further in the absence of publication of the arbitration agreement in the Official Gazette, as required in Sub-section (3) of Section 10A

of the Act. The parties approached Government for withdrawing the reference to the Industrial Tribunal, but Government pleaded their inability to do so. It is in these circumstances that the present application has been filed under Article 226 of the Constitution for an order quashing the reference of the dispute by the Government to the Industrial Tribunal in May, 1966, and for the issue of a writ of mandamus directing the State Government to publish the arbitration agreement in the Official Gazette.

2. In the counter-affidavit filed on behalf of the State Government, it was admitted that the petitioner and the Hindustan Steel Limited (opposite party No. 3) had entered into a settlement on 28-5-1965 agreeing to refer the dispute in question to the arbitration of Shri R.C. Misra. But, it is stated, that thereafter despite several reminders, the parties did not enter into the agreement as provided in Rule 7 of the Orissa Industrial Disputes Rules. They did not show also any keenness to get the dispute settled through arbitration. Meanwhile, N. Roy issued a notice to Government to go on "hunger strike" with effect from 2-4-1966 till the dispute relating to him was finalised. It is in these circumstances that Government had to make the reference to the Industrial Tribunal for adjudication of the dispute. Thereafter opposite party No. 3 approached Government to withdraw the reference made to the Industrial Tribunal, but Government pointed out that they had no jurisdiction to withdraw the dispute which was once referred to the Tribunal for adjudication.

3. Section 10A of the Act refers to voluntary reference of disputes to arbitration. This section authorises the parties where any industrial dispute exists to refer any dispute to arbitration of any person or persons, or, if they ,so agree, to the Presiding Officer of a Labour Court or Tribunal or National Tribunal. The agreement is required to be in writing and signed by the parties and Rule 7 of the Orissa Industrial Disputes Rules, 1959 provides that an arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form. C and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of Orissa in the Labour Department, Labour Commissioner, Orissa, and the local Conciliation Officer concerned. The agreement is also to be accompanied by the consent in writing from the arbitrator or arbitrators. It is contended on behalf of the State that the arbitration agreement between the parties for reference of the dispute to the arbitration of Shri R.C. Misra had not been made in the prescribed Form "C" appended to the Rules and that Annexure-III, the agreement, is not in proper and prescribed form. Although we find that Annexure-III is not in the prescribed form, we are satisfied on perusing Annexure-III and also Form No. C. appended to the Rules that Annexure-III substantially complies with the requirements of the arbitration agreement. On 26-6-1965, the Deputy General Manager, opposite party No. 3, wrote a letter to the District Labour Officer, Rourkela intimating to him that Shri R.C. Misra had given his consent in writing to arbitrate in the dispute and a copy of the letter received from Shri R.C. Misra was also enclosed thereto. Although technically this consent in writing of the arbitrator was not

enclosed to the agreement as required under Rule 7 of the Orissa Industrial Disputes Rules, 1959, we are satisfied that that particular requirement of Rule 7 has also been substantially complied with. No documents have been filed before us to prove that a copy of the agreement had also been sent to Government. But from Annexure-VI dated 3rd May, 1966 addressed by the Labour Commissioner to the petitioner and opposite party No. 3, it is clear that the Government were fully aware that such arbitration agreement had been arrived at. The position, therefore, is that by 5th May, 1966, when Government referred the dispute to the Industrial Tribunal (Annexure-VII), there was already a voluntary reference of the dispute by concerned parties to the arbitration of Shri R.C. Misra. In the circumstances, Government had no jurisdiction to make the reference to the Industrial Tribunal and it is therefore liable to be quashed.

4. In view of the fact that a copy of the arbitration agreement had been forwarded to Government and Government were fully aware of the same, it was their duty to publish the same in the Official Gazette within a month from the date of receipt of the agreement from the parties. Government admittedly failed to discharge the statutory duty imposed on them. It is necessary that they should now do so.

5. In the result, we would allow this petition, quash the order of the State Government referring the dispute to the Industrial Tribunal under Sub-section (5) of Section 12 read with Clause (d) of Sub-section (1) of Section 10 of the Act and direct that a writ of mandamus be issued to the State Government to publish the arbitration agreement in the Official Gazette within a month from the date of this order. In the circumstances, there would be no order as to costs.

R.N. Misra, J.

6. I agree.