
(2010) 03 GUJ CK 0076
In the Gujarat High Court
Case No : S.C.A. No. 5323 of 1997

N.S.P. Straw and Paper Products (P) Ltd.	APPELLANT
Vs	
Commissioner of Labour	RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1)

Citation : (2010) 127 FLR 797 : (2010) 51 GLR 2541 : (2010) 4 LLJ 356

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Nanavati and Nanavati, for the Appellant; Mukesh H. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The short facts of the case appears to be that on January 15, 1997, the Petitioner Company applied for permission of closure of Straw Board Division. On March 12, 1997, the specified authority under the Industrial Disputes Act (hereinafter referred to as "the Act") and the Commissioner of Labour granted permission for closure. On March 29, 1997, the Petitioner Company sent order of termination on account of the closure and the statements of accounts and the cheques were also forwarded to the concerned workmen. On March 31, 1997, it appears that as some of the workers, viz. one Shankarbhai Ranchoddbhai Patel and others preferred the application, the Petitioner Company received the notice of review application. On April 4, 1997, the specified authority under the Act fixed the hearing below the review application and it is the case of the Petitioner that the written objections were also filed. Thereafter, the matter was heard. On June 4, 1997, the specified authority, by way of the impugned order, referred the matter to the Industrial Tribunal and based on the same, the Petitioner was communicated by the Tribunal, it is under these circumstances, the Petitioner has approached this Court by the present petition.

2. Heard Mr. Devang Nanavati, learned Counsel for the Petitioner, Mr. Raval,

learned AGP for Respondent No. 1 and Mr. Rathod for Respondent Nos. 2 and 3.

3. The principal grievance raised on behalf of the Petitioner by the learned Counsel Mr. Nanavati is that the specified authority in the impugned order has not stated any reason whatsoever for making reference to the industrial Tribunal, was submitted that once the permission was granted for closure u/s 250(2) of the Act, the power of review could not have been exercised without recording any reasons. In furtherance to his submission, he contended that the fact that the show-cause notice was given before exercise of the power and that the hearing was fixed are sufficient to conclude that there was to be application of mind on the aspects as to whether the case is required to be reviewed or not and if the power is to be exercised, the specified authority could not have done so unless valid reasons were recorded for such purpose. He contended that in the impugned order, for making reference to the Industrial Tribunal, there are no reasons whatsoever. Hence, the order is non-speaking order and there is no application of mind and hence, the same deserves to be quashed and set aside.

4. Whereas the learned Counsel for the Respondent workmen and the union contended that no reasons are required to be stated if the reference is to be made. It is only when the reference is to be rejected or reference is not to be made, the reasons are required to be stated. In support of the said contention the learned Counsel relied upon the decision of the Apex Court in the case of Sultan Singh Vs. State of Haryana and another, and on the aspects of scope of and exercise of the power u/s 250(5) of the Act, the learned Counsel relied upon the Division Bench judgment of this Court in the case of Rajya General Kamdar Mandal and Others Vs. Vice President, Packart Press, Div. Ambalal Sarabhai Enterprises, Baroda and Others,

5. Whereas, the learned AGP has supported the order.

6. In order to examine the contention, reference to Section 250(1)(2) and (5) would be relevant The same reads as under:

Procedure for closing down an undertaking. (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this Sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under Sub-section (1), the appropriate Government after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen

and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3)....

(4)....

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference, has been made to a Tribunal under this Sub-section it shall pass an award within a period of thirty days from the date of such reference.

7. On the aspects of exercise of the power u/s 250(1) and (2) of the Act, there is no challenge which arise for consideration in the present petition and, therefore, the same may not assume much importance, but the contention of the learned Counsel for the Petitioner was that it is after holding necessary enquiry, the specified authority has to grant permission. The contention was raised to the effect that if after proper application of mind, the permission has been granted, such power if to be reviewed cannot be without recording any reasons.

8. At the first blush, the contention may look to be with substance, but on the close scrutiny, it appears that as per Section 250(5) of the Act, the Government is clothed with the power to review its order, but one of the mode provided for review by itself and the second mode is to refer the matter to the Tribunal for adjudication with a purpose to examine the legality and validity of the decision u/s 250(2) of the Act. If the first mode is to be exercised by the State Government for reviewing its own order and to render decision upon grant or refusing to grant permission of closure, the reasons would be required to be recorded as a sine qua non to the extent of modifying the earlier order. The reasons being that when any authority is exercising the power of review, it has the character of quasi judicial power and it would be required for such authority to record the reasons. This Court is not confronted with the situation about such an exercise of the power of review by the State Government in the present case and, therefore, what could be the scope and ambit of such exercise of the power of review or the requirement of the reasons to be recorded, no discussion is required on the said aspects. But, if the second mode is to be resorted to by the State Government for referring the matter to the Tribunal for adjudication, the Government does not review its order, but it only refers the matter for adjudication and at that stage, though such power may be of making reference, but would attract the same situation as arise for making reference to any industrial dispute u/s 10 of the Act.

9. At this stage, the reference may be made to the decision of the Apex Court in the case of *Sultan Singh v. State of Haryana* (supra) and more particularly the observations made at para 5 in the said decision, which reads as under:

5. The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative order and so is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to the employer nor to consider his objections nor to hear him before making reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on said application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference. The previous decision of that Court relied on in the case at hand was wrongly decided.

10. The reference may also be made to the decision of this Court in the case of *Rajya General Kamdar Mandal and Ors. v. Vice-President, Packart Press, Division of Ambalal Sarabhai Enterprises, Baroda and Ors.* (supra), wherein this Court having interpreted the provisions of Section 250(5) observed that the word "may" is to be interpreted as "shall" for making reference to the Tribunal. Therefore, when reference is made to the Tribunal, no rights of the parties are altered by exercise of the final order of reviewing the earlier decision. But, whether to review the decision or not is an issue referred to the Tribunal. It is hardly required to be stated that before the Tribunal, both parties will have enough opportunity to put forward the case and the Tribunal in any case while passing the award, upon a reference would be required to record the reasons.

11. Under these circumstances, at the stage when the reference is only made to the Tribunal by the State Government, no reasons would be required to be recorded. Therefore, in view of the aforesaid, the contention of the learned Counsel for the Petitioner lacks merit, hence cannot be accepted.

12. The learned Counsel for the Petitioner did rely upon the decision of the Apex Court in the case of *Vazir Glass Works Ltd. Vs. Maharashtra General Kamgar Union and another*, for contending that the exercise of the power u/s 250(5) and the exercise of the power u/s 10(1) of the Act for making reference are separate, therefore, in the contention of the learned Counsel for the Petitioner, the analogy as canvassed on behalf of the Respondent Worker's Union for not recording of the reasons or the reliance placed upon the decision of *Sultan Singh v. State of Haryana* (supra) is ill-founded.

13. In the decision before the Apex Court in the case of *Vazir Glass Works Ltd. v. Maharashtra General Kamgar Union and Anr.* (supra), the view is not expressed by the Apex Court that the requirement of recording of the reasons at the time of reference u/s 10(1) of the Act would be different than that at the time of making reference u/s 250(5) of the Act therefore, the said decision, as such, is of no help to the learned Counsel for the Petitioner. Apart from the above, in the decision of

the Apex Court in the case of Vazir Glass Works Ltd. v. Maharashtra General Kamgar Union and Anr. (supra), the question arose for making reference within the life of the order passed u/s 250(2), i.e. one year or not which is not the controversy in the present case.

14. In view of the aforesaid, the petition is meritless and hence, dismissed. It is observed that rights and contentions of both the sides on the legality and validity of the order passed u/s 250(2) before the Industrial Tribunal shall remain open and the Tribunal shall be at the liberty to take the independent view of the matter on the basis of the material available before it and any observations made by this Court in the present judgment shall not prejudice the rights of either side.

15. No order as to costs.