
(2009) 03 OHC CK 0074
In the Orissa High Court

N.T.P.C. Ltd. and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 2

Citation : (2009) 107 CLT 619 : (2009) 121 FLR 971 : (2009) 3 LLJ 539 :
(2009) 2 OLR 808 Supp

Hon'ble Judges : P.K. Tripathy, J;L.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard further argument. Hearing is concluded and the Judgment is as follows.
2. National Thermal Power Corporation Ltd. (In short "N.T.P.C") through its General Manager, Petitioner No. 2 has filed this Writ Petition challenging the conciliation failure report, Annexure-1 and the reference Annexure-2 made u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (In short "I.D. Act"). Petitioners have prayed to quash Annexures 1 and 2 and also to direct for disposal of Industrial Dispute Case No. 2 of 2007 in the file of Industrial Tribunal, Bhubaneswar accordingly.
3. Talcher Thermal Power Station (in short, "T.T.P.S.") was owned and managed by Orissa State Electricity Board (In short, "Board"). By virtue of Section 3 of the Talcher Thermal Power Station (Acquisition and Transfer) Act, 1994 (In short, "the Act, 1994"), the Thermal Power Station and the right, title and interest of the Board in relation thereto stood vested with the State Government. The said Statute (Act, 1994) also provides for transfer of the Thermal Plant and its properties in favour of N.T.P.C. So far as the point in dispute is concerned, the relevant provision relating to transfer and regulating the services of the employees is covered by Chapter V of the Act, 1994. Section 10 therein provides that regular employees of the Power Station would be absorbed in the service of the N.T.P.C. in accordance with the provisions therein. Section 10(ii)(a) the

relevant provision in that respect reads as hereunder:

(a) Subject to the provisions of Clauses (b) and (c) of this Sub-section and Sub-sections (3) and (4), all the employees on the regular rolls of the Power Station shall be absorbed in the services of the Corporation who may, with a view to achieving better productivity and efficiency, redeploy them in Talcher Super Thermal Power Project or in any other project or Power Station belonging to them and such employees absorbed in the services of the Corporation shall be Governed by the Rules and Regulations of the Corporation in force from time to time.

4. NTPC Power Workers Union, Opp. Party No. 3 is the recognized and approved Union. It raised the dispute against the policy of N.T.P.C. in transferring the workmen from Talcher to Kaniha, where another Unit of N.T.P.C. is functioning. Their ground of objection is that by the date of taking over of T.T.P.S. by N.T.P.C, the staff strength of the workmen at Talcher was little above 2100 and N.T.P.C. by taking arbitrary action has already reduced the strength to about 900 workmen and on the basis of feasibility report of requirement of man power of N.T.RS, the N.T.P.C. is taking further steps to transfer further workmen from Talcher to Kaniha and therefore, that is detrimental to the service conditions of the workmen by putting more pressure of work as against the yardstick and apart from that, by such transfer the management is also creating other inconvenience to the workmen.

5. On receipt of such protest letter/demand/labour dispute raised by Opp. Party No. 3, the Conciliation Officer-cum-District Labour Officer, Talcher took up the dispute for conciliation and after considering the submission and statement of both the parties i.e. Management and the Workmen, he submitted the failure report, Annexure-1 together with all relevant statements of both the parties. After consideration of such failure report and the appended documents, the State Government made the reference, Annexure-2 asking the Industrial Tribunal, Bhubaneswar to decide the schedule reference. The dispute under reference reads as hereunder:

Whether the reduction of work force of Talcher Thermal Power Station, Talcher by the management of M/s. N.T.P.C. Ltd., Talcher Thermal Power Station is legal, proper and or justified?

6. Admittedly, Industrial Dispute Case No. 2 of 2007 is pending in the file of the Industrial Tribunal, Bhubaneswar. But before receiving notice in that case, Petitioners have filed this Writ Petition in June, 2007. The sum total of the contentions of the Petitioners is that the dispute identified in the above quoted reference cannot be construed as an Industrial Dispute, because deployment of the workmen is within the administrative jurisdiction of the N.T.P.C. as per the above quoted provision from Section 10 of the Act, 1994 and apart from that redeployment in the name of transfer to Kaniha does not affect any service conditions of the workmen and therefore in true sense their does not exist any

Industrial Dispute within the meaning of Section 2(k) of the Act and the Fourth Schedule thereof.

7. In furtherance of that contention, Mr. Jayant Das, Learned Senior Advocate appearing for the Petitioners relies on the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, and Public Services Tribunal Bar Association Vs. State of U.P. and Another, . In support of the contention of the workers, opp. party No. 4 while referring to entry No. II in the Fourth Schedule also refers to the ratio in the cases of State of Madras Vs. C.P. Sarathy and Another, , Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, and Shambu Nath Goyal Vs. Bank of Baroda, .

8. Ratio follows from the above citations is to the effect that

(1) Whether, a dispute is an Industrial Dispute or not, that cannot be considered by the Industrial Tribunal and therefore if the writ jurisdiction of the High Court is invoked, then the High Court should consider that aspect.

(2) If a dispute under reference is not an Industrial Dispute then a reference is not maintainable and it can be quashed by the High Court.

(3) If the dispute is an industrial dispute, then the High Court cannot go into the adequacy or inadequacy of reasons mentioned in the reference while making reference by the State Government.

9. So far as the present case is concerned, it has therefore to be seen, as to whether the dispute under reference is an Industrial Dispute. Entry No. 11 of the Fourth Schedule of the Act reads as hereunder:

11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

It follows from the aforesaid entry that a dispute relating to increase or decrease in the number of persons employed or to be employed under the given " circumstances comes within the purview of conditions of service for change of which notice is to be given. At this stage, it is appropriate to quote Section 2(k) of the I.D. Act.

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

It is apparent from the above quoted definition of the industrial dispute that a dispute between the employer and workman connected with the term of "employment" or the conditions of labour of any workman is to be construed as "Industrial dispute". In Annexure-3 as well as in Annexure A/1, A/3 and B/3 grievance of the workmen is not merely against the order of transfer in the name of redeployment but changing the condition of service by reduction of the

number of workmen at Talcher. Therefore, we find it to be an Industrial Dispute. Once that be so, the reference is maintainable and we hold accordingly.

10. We make it clear that purposefully we have not gone into the merit of the case on factual aspect either on the demand of the workman with resistance to the action of the management in reducing the staff strength by transfer/ deployment and the appropriateness of such action taken by the N.T.P.C, inasmuch as, such dispute is to be considered by the Tribunal on due appreciation of evidence, if any, tendered by the parties. Therefore, dismissal of this Writ Petition should not be inferred in any manner by the Tribunal while deciding the dispute under reference.

11. For the reasons indicated above, we find no merit in the Writ Petition and the same is accordingly dismissed.

12. We see that having everything including proper legal advice at the command of the NTPC, it has dragged the Opposite Party No. 4 into this unnecessary litigation and, therefore, we direct the Petitioner to pay a consolidated cost of Rs. 5,000 (Rupees five thousand) to the Opposite Party No. 3 within a month. Payment be made to the Labour Union with proper receipt.