

**(1987) 05 OHC CK 0004**

**In the Orissa High Court**

Orient Paper Mills Sramik Congress

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 08-05-1987

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 12, 18, 2

**Citation :** (1988) 2 LLJ 75

**Hon'ble Judges :** K.P. Mohapatra, J;G.B. Patnaik, J

**Bench :** Division Bench

## Judgement

G.B. Patnaik, J.—The workmen through their Union have challenged the legality of the orders of reference passed by the State Government in exercise of powers conferred under Sub-section (5) of Section 12 read with Clause (d) of Sub-section (i) of Section 10 of the Industrial Disputes Act (hereinafter referred to as "the Act") for three different years in these three writ petitions and since common questions of fact and law are involved, these petitions were heard together and are being disposed of by this common judgment. O.J.C. No. 1596 of 1983 is in respect of the accounting year 1981-82, O.J.C. No. 1483 of 1984 is in respect of accounting year 1982-83 and O.J.C. No. 1956 of 1985 is in respect of accounting year 1983-84.

2. The brief facts of the case are that on the basis of settlements between the Management and the workmen, the workmen were getting annual bonus at the rate of 20% of the basic, dearness allowance and additional wages earned by the workmen during the respective financial year for which bonus was being paid and such settlements continued till the year 1980-81. The Settlement arrived at between the parties on 23rd December 1969 was for the years 1964-65 till 1970-71, the Settlement dated 26th June 1972 was for the years 1971-72 till 1974-75, the Settlement dated 19th September 1975 was for the years 1975-76 till 1977-78 and the Settlement dated 12th August 1978 was for the years 1978-79 till 1980-81. There is a General Body Meeting of the Union of the workmen held on 31st January 1981 and it was decided in the said meeting to

demand bonus at the rate of 25% and in pursuance of the said decision, a demand was made by the Union in the form of a notice which was received by the Management on 31st January 1981. Along with the demand of bonus, there were several other demands. It is the case of the Union that on 14th January 1982, a Settlement was arrived at between the Management and the workman where under several disputes were finalised, but so far as the demand of bonus was concerned, it was decided that the matter would be finalised within period of four months from the date of such settlement. Notwithstanding the aforesaid agreement between the parties, it is alleged by the Union-Petitioner that the Management did not come forward for any discussion and tried to evade the issue on one pretext or other, whereupon, the Union addressed a letter to the Assistant Labour Commissioner on 10th August 1982 requesting the Labour Department to take initiative in the matters of a joint discussion. Thereafter, though a joint discussion was held between the Management and the Union, yet it did not produce any fruit and before 30th November, 1982, the date before which the annual bonus was required to be paid. The Management notified that it would pay the annual bonus at the rate of 8.33% pending conciliation and this notice was served on the Union on 27th November 1982. The workmen who have been getting the bonus at the rate of 20% ever since 1971-72 felt that the Management had betrayed and was not interested in the settlement of the dispute by mutual discussion and finding the attitude of the Management as non-cooperative, the Union decided to take recourse to a general strike and, in fact, served a strike notice under Rule 78 of the Orissa Industrial Disputes Rules, 1959 (hereinafter referred to as "the Rules") on 8th December 1982. In the strike notice, it was clearly mentioned that the workmen should receive bonus at the rate of 20% as per the practice in previous years, pending discussion for increase of the said bonus upto 25%. On the basis of the strike notice, a conciliation proceeding was initiated by the Conciliation Officer which was taken up on 14th December 1982 and continued upto 15th December 1982. In the conciliation proceedings, the Management insisted that the workmen were not entitled to 20% bonus and they were entitled only to bonus at the rate of 8.33% and in the circumstances, the Conciliation Officer submitted a "Failure report" to the Government by his letter dated 18th December 1982. The said failure report has been annexed as Annexure-6 to the writ application in O.J.C. No. 1596 of 1983. On receipt of the said report of the Conciliation Officer, the State Government were satisfied that an industrial dispute did exist between the Management and its Workmen and the Government considered it expedient to refer the dispute for adjudication and, in fact, referred the dispute as per Annexure-7 to the writ petition. It is this reference which is being impugned in O.J.C. No. 1596 of 1983. The dispute which was referred by the State Government for adjudication was:

What should be the quantum of bonus payable to the workmen of M/s. Orient Paper Mills, Brajrajnagar unit for the accounting year 1981-82 under the Payment of Bonus Act, 1965 pursuant to the audited profit and loss account of M/s. Orient Paper Mills, Brajrajnagar Unit, for the said accounting year?

3. The dispute that was referred by the State Government for the accounting year 1982-83 which is the subject-matter of challenge in O.J.C. No. 1483 of 1984 and which has been annexed as Annexure-7 to the said writ application, had been couched in a slightly different language and is extracted hereunder in extenso:

What should be the quantum of bonus to be payable to the workmen of M/s. Orient Paper Mills, Brajrajnagar Unit, by Orient Paper Mills, Brajrajnagar Unit for the accounting year 1982-83 under Payment of Bonus Act, 1965?

Similarly, the dispute for the accounting year 1983-84 which is the subject-matter of challenge of O.J.C. No. 1956 of 1985 and which has been annexed as Annexure-7 to the said writ application is to the following effect:

What should be the quantum of bonus payable to the workmen of M/s. Orient Paper Mills, Brajrajnagar Unit, by M/s. Orient Paper Mills, Brajrajnagar Unit, for the accounting year 1983-84 under the Payment of Bonus Act, 1965?

4. It is to be noted at this stage that the workmen not being satisfied with the order of reference dated 20th December, 1982 (Annexure-7 in O.J.C. 1596 of 1983) continued their strike for 11 months and after a protracted negotiation, on the assurance of the District Collector, the strike came to an end and some sort of normalcy has been restored.

5. Mr. Palit, the learned Counsel for the petitioner, contends that the reference as has been made, is not really the dispute between the parties, but only the contention of the Management before the Conciliation Officer and the State Government in making the reference wholly omitted to take into account the relevant considerations, not even the genesis of the dispute between the parties and, therefore, the order of reference as made cannot be sustained.

6. Mr. Das, the learned Counsel for the Management, on the other hand, contends that the High Court in exercise of its power under Articles 226 and 227 of the Constitution does not act as an appellate authority to determine the correctness of the order of reference and what it has to be satisfied is as to whether prima facie what has been referred to is an "industrial dispute" and can be adjudicated upon by the Tribunal and no tribunal can decide the question of payment of bonus without reference to the provisions of the Payment of Bonus Act. In that view of the matter, there has been no illegality in the order of reference since ultimately the dispute between the parties is as to the quantum of bonus payable to the workmen and this dispute has to be answered with reference to the provisions of the Payment of Bonus Act. According to the learned counsel, the reference is wide enough to include the demand of the petitioner and there is no illegality in the same to be interfered with by this Court. The rival contentions require careful examination both on questions of law and fact.

7. It would be appropriate at this stage to note the powers of interference by this

Court with an order of reference made by the State Government u/s 12(5) read with Section 10(1)(d) of the Act. Under Sub-section (5) of Section 12 of the Act, if the appropriate Government is satisfied on a consideration of the report submitted by the Conciliation Officer under Sub-section (4) of Section 12, indicating the facts and circumstances and the reason on account of which a settlement could not be arrived at, that there is a case for reference to the Tribunal, the State Government shall make the reference. The Conciliation Officer gets jurisdiction to hold a conciliation proceeding where an industrial dispute exists or is apprehended. Section 10 of the Act enables the State Government to refer the dispute to any one of the specified authorities contained in Clauses (a) to (d) of Section 10(1) depending upon the nature of the dispute. The steps to be taken by the State Government are contemplated in Section 10 itself depending upon the exigencies of the situation. Section 10 is, therefore, the fountain source of power of the appropriate Government to set in motion the machinery for adjudication of industrial disputes. The two essential ingredients for exercise of powers u/s 10 are that (i) the appropriate Government must be of opinion that a dispute exists or is apprehended and (ii) the reference must be by an order in writing. Power u/s 10(1) of the Act gives a wide discretion to the appropriate Government or the State Government either to refer the dispute or not to refer it, for adjudication according as it is of the opinion that it is expedient to do so or not. But even such discretion has to be exercised fairly and bona fide and not arbitrarily and it is always desirable that the Government should indicate the nature of the dispute in the order of reference. Even though as to the factual existence of the industrial dispute and of the expediency to refer that dispute for adjudication, the Government is the sole Judge, yet having regard to the scheme of the Act, there cannot be any manner of doubt that the Government must consider the relevant materials and form its own opinion on germane considerations. However subjective the satisfaction of the State Government may be, if the satisfaction is based on non-consideration of the relevant materials or considerations not germane to the issue, then the said opinion has to be interfered with by this Court in exercise of powers under Articles 226 and 227 of the Constitution. A reading of Section 12 of the Act would indicate that the appropriate Government would consider the failure report of the Conciliation Officer carefully and treating it as furnishing the relevant material which would enable the Government to decide whether a case for reference has been made or not, form its conclusion about the same. At the same time it would be open to the Government to consider other relevant facts which may come to its knowledge or which may be brought to its notice, and it is in the light of all these relevant facts that it has to come to its decision whether reference should be made or not. The power of the State Government in this sense is not that absolute so as to allow the Government to take a final decision in assertion of its ipse dixit and even the wide and absolute power is hedged by some limitations. The expression "industrial dispute" has been defined in Section 2(k) of the Act to mean any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected

with employment or non-employment or the terms of employment or with the conditions of labour, or with any person. When an order of reference is challenged in a court of law, the Court can make enquiry as to whether the point in dispute or the complaint or grievance of the Union was taken into account or not. If the order of reference indicates that the real grievance has not been taken into consideration, then it would be within the powers of the Court to direct the State Government for re-consideration. Even in a case where a reference has been made by the State Government but such reference indicates that the Government did not bear in mind the real dispute between the parties, then in such a case, the Court would be fully justified to hold that the opinion of the Government is based on non-consideration of relevant materials and the point for adjudication that has been referred is not the point in dispute between the parties. Even if the order of reference indicates that any irrelevant consideration did not creep into the mind of the Government in making reference, but it appears that the Government misdirected itself in making the reference in as much as the real dispute between the parties has not been kept in mind, then in such a case also this Court would be fully entitled to interfere with the order and direct re-consideration of the matter by the Government.

8. With the aforesaid broad parameters with regard to the power of interference by the Court in respect of an order of the State Government u/s 10(1) read with Section 12(5) of the Act, we shall now examine some authorities cited at the Bar by counsel for both sides.

9. In the case of *Hochtief Gammon Vs. State of Orissa and Others*, which was a case of refusal to make a reference and on which the learned Counsel for the petitioner places considerable reliance, the Supreme Court has considered the powers of the Court to interfere with an order of the State Government. The Supreme Court had approved the principles enunciated by the House of Lords in the name of *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) A.C. 997 and then ultimately summarized as follows at p. 428:

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by Courts by falling to give reasons. If they give reasons and they are not good reasons, the Court can direct them to re-consider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to Judicial scrutiny. Even if the Executive consider it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.

In this particular case, the Government had referred for adjudication a dispute as

to whether workers of M/s. Hochtief Gammon, Civil Engineers and Contractors, Rourkela are entitled to any bonus and if so, what should be the quantum? An application had been filed thereafter u/s 18(3)(b) of the Act praying that it was necessary to bring on record the Company as a party to the proceeding. The said application having been rejected, an application had been filed before the Orissa High Court and the High Court also dismissed the writ petition. Thereupon the matter was carried to the Supreme Court by Special Leave and ultimately the Supreme Court came to the conclusion that within the frame work of the reference as made by the Government, it was difficult to answer the question as to who was the employer as between the appellant and the Company and this question was incidental to the industrial dispute which had been referred for adjudication. Therefore, an application was filed before the State Government asking the Government to modify the earlier reference by adding the Company as a party to the reference and further to have an additional clause to the effect, "If bonus is payable, who is the employer and who is responsible for payment of bonus to the workmen" and the Government having rejected the said prayer, the matter was carried ultimately to the Supreme Court and the Supreme Court applying the ratio of the House of Lords in *Padfield's case* (supra) came to hold that it did not appear from the communication of the Government to the appellant that they had applied their mind to any of the considerations set out in the appellant's application and accordingly directed the State Government to re-consider the matter.

10. The next case on which Mr. Palit for the petitioner relies is the case of *State of Bombay Vs. K.P. Krishnan and Others*, . The Supreme Court in this case examined the powers of the State Government u/s 10(1) read with Section 12(5) of the Act and the power of interference by a Court with the said order and ultimately came to the conclusion that if the order of the Government was influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a court of law. It was held that the crucial enquiry for a Court was to find out whether the reasons recorded by the Government u/s 12(5) were germane and relevant or not. The Court then in the aforesaid case considered the real point of dispute between the parties in paragraph 18 of the judgment and tried to find out whether the reasons given by the State Government for refusing to make a reference were germane or not. The Supreme Court came to the conclusion that punitive action taken by the Government by refusing to refer for adjudication an industrial dispute for bonus would only be inconsistent with the object of the Act and it was further held that the order of the Government was based on consideration which is not germane and is extraneous and accordingly the Government was directed to re-consider the matter *State of Bombay Vs. K.P. Krishnan and Others*, at 602-604.

11. We shall now consider some of the decisions cited by Mr. G. Das appearing for the opposite parties. In the case of *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, where a Union of workmen had

complained that two workmen were illegally terminated from service and demanded their reinstatement with full back wages and continuity of service, the appropriate Government referred the question as to whether the retrenchment of the two workmen was justified and if not to what relief they were entitled and that order of reference had been challenged on the ground that really the demand made by the Union had not been referred to the Tribunal by the Government and the dispute that had been referred was contended to be an entirely different demand. The Supreme Court on consideration came to hold that a comparison of the demand raised by the Union and the demand subsequently referred to the tribunal would negative the contention. It was held by their Lordships that the language or the format in which the demand was couched was hardly decisive of the matter and it was the substance of the matter that had to be looked into. If it was found that what was the grievance of the workmen complained of or espoused by the Union and what the Industrial Tribunal had been called upon to adjudicate was one and the same thing, then hardly there would be any power with the Court to interfere on a finding that the reference was incompetent.

12. Mr. Das, the learned Counsel for the opposite parties also places reliance on the decision of the Supreme Court in the case of *Upendra Chandra Chakraborty and Another Vs. United Bank of India*, as well as the decision of the Supreme Court in the case of *Dishergarh Power Supply Co. Ltd., Calcutta and Ors. v. Workmen of Dishergarh Power Supply Co. Ltd. and Ors.* [1986 (53) FLR 307 (SC)]. In both these cases, it is the final order of the tribunal that was the subject-matter of consideration and it is the finding of the tribunal which was being challenged before the Supreme Court. In our opinion, both these aforesaid decisions have no application to the point in issue in the present case.

13. The sum and substance of the argument of Mr. Das for the opposite parties is that the entitlement of bonus of the workmen is governed by the provisions of the Payment of Bonus Act and, therefore, the impugned reference made by the Government does not suffer from any infirmity since the Tribunal has been called upon to find out as to whether the workmen are entitled to any bonus in view of the profit and loss account of the Company and if so to the quantum thereof.

14. Having considered the contention raised by the learned Counsel for either party and giving our anxious consideration to the materials on record, we are of the opinion that the State Government has not considered all the relevant material and has misdirected itself as to the genesis of the dispute while making the impugned orders of reference. The strike notice under Rule 78 of the Rules that was served on the Management as per Annexure-5 and the failure report of the Conciliation Officer (Annexure-6) unequivocally indicate that the real dispute between the parties is as to whether the workmen who had been receiving 20% annual bonus for long 12 years under different settlements and demanded a higher rate of bonus of 25% for the years in question are entitled to the same, or the action of the Management declaring bonus at the rate of 8.33% pending

conciliation is justified, or not. The fact that the workmen were receiving bonus at the rate of 20% for more than 12 years was the real point of controversy between the parties appears to have not been considered by the State Government while making the impugned reference and, on the other hand, the impugned reference indicates that what has been referred for adjudication is as to what would be the entitlement of the workmen regarding bonus under the provision of the Payment of Bonus Act. This undoubtedly was not the real point of controversy nor was it the genesis of the dispute between the parties. In our opinion, the essence of the dispute has not been referred and that is because the relevant materials appear to have not been considered by the State Government while making the reference in question. In other words, the State Government has misdirected itself on the question of the essential dispute between the parties and has failed in its duty in not taking into account the relevant materials and considerations. Even applying the test laid down in *M/s. Avon Services Production Agencies's* case (supra), we are not in a position to accept the contention of Mr. Das, the learned Counsel appearing for the opposite parties, that the substance of the matter with regard to the grievance of the workmen complained of and espoused by the Union and the dispute that has been referred by the Government to the tribunal for adjudication is one and the same, and we hasten to add that the State Government has not applied its mind to the true genesis of the dispute and the other relevant materials on records which vitiates the order of reference. Having applied our mind to several relevant documents including the failure report u/s 12(4) of the Act as well as the strike notice, served on the Management by the Union, we are of the opinion that the appropriate reference for adjudication should have been:

In view of the fact that workmen have been receiving bonus at the rate of 20% for long years, though under different settlements, is the Management entitled to declare bonus at the rate of 8.33% for the years 1981-82, 1982-83 and 1983-84. If not, what would be the rate of bonus? And further, are the workmen entitled to claim higher bonus of 25%?

But as we have stated earlier, it is the jurisdiction of the State Government to make the order of reference and not for the Court to do so. Though Mr. Palit appearing for the petitioner relies upon the decision of the Supreme Court in the case of *Akhil Bharatiya Soshit Karamchari Sangh (Railway)* represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, as well as the decision of the Supreme Court in the case of *Nirmal Singh Vs. State of Punjab and Others*, in support of his contention that this Court should straightaway make the reference in question to the Tribunal, yet we are not prepared to accept the said submission of the learned Counsel in view of the Constitution Bench Judgments of the Supreme Court in *K.P Krishna's* case (supra), as well as the decision of the Supreme Court in *M/s. Hochtief Gammon* case (supra). Accordingly, we would quash the order of reference (Annexure-7) in each of these writ petitions and remit the matter to the State Government for re-consideration and direct the State Government to make the appropriate

reference to the Tribunal to adjudication bearing in mind the principles law as well as the observations made by us in this judgment. We note the fact with great concern that the question of bonus for a large number of workmen which gave rise to industrial unrest for the years 1981-82, 1982-83 and 1983-84 is still being fought out on preliminary point and in the circumstances, we would call upon the State Government to make the appropriate reference within a period of two months from the date of receipt of our order.

15. The writ applications are accordingly allowed, but in the circumstances, there would be no order as to costs.