

(2016) 02 GUJ CK 0081

In the Gujarat High Court

Case No : Special Civil Application No. 20126 of 2015

Paharpur Cooling Towers Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2016) 149 FLR 181 : (2016) LabLR 630 : (2016) 2 LLN 686

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : Mihir Thakore and Salil M. Thakore, for the Appellant; Utkarsh Sharma and Rajesh P. Mankad, for the Respondent

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J.—1. Challenge in this petition is made by the employer to the order dated 6.8.2015, passed by the Appropriate Authority under the Industrial Disputes Act, 1947, making Reference to the Industrial Tribunal, Vadodara for adjudication of the disputes referred therein. The said order has culminated into Reference (IT) Demand No. 95 of 2015.

1.1 Mr. Mihir Thakore, learned Senior Advocate for the petitioner employer has submitted that, while referring the disputes mentioned in the Schedule of the Reference order, the Authority has, in substance recorded finding against the petitioner on many of the disputes. Attention of this Court is invited to the language of Demand Nos. 2 and 10 to contend that on one hand, the dispute is being referred as to whether the contract between the petitioner and respondents No. 4 and 5 is sham and bogus or not, but at the same time, the finding is also recorded that it is so. It is further contended that, in the Reference order, it is also noted that the workmen of the respondent Union are not getting the wages at par with the other workmen of the Company. Attention of this Court is invited to the language of Demand No. 10, which is with regard to the effective date of implementation of the wage revision and while doing so, the profitability

of the company is held to be a concluded issue, according to the petitioner. It is submitted that the Government does not derive power to first adjudicate the matter and then to refer it.

1.2 Learned Senior Advocate for the petitioner has further contended that, what is referred to under the Industrial Disputes Act, 1947, in substance is the controversy which can be adjudicated under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and therefore the Reference would be incompetent in that regard. It is submitted that there is no dispute between the petitioner and the workmen which can be termed to be an industrial dispute and therefore the Reference is incompetent. Reliance is placed on the following decisions by the learned senior Advocate for the petitioner, in support of his submission.

(i) Mahadev Textile Mills, Hubli v. Additional Industrial Tribunal 1976 Law Suit (Kar) 120,

(ii) Ram Avtar Sharma v. State of Haryana , 1985 (51) FLR 71 (SC),

(iii) Steel Authority of India Ltd. v. Union of India , 2006 (111) FLR 483 (SC),

2.1 This petition is contested by respondent No. 6 - Union. Mr. Mankad, learned Advocate for respondent No. 6 has submitted that, the Union had raised various demands, for which charter of demand was submitted vide Annexure-D dated 1.12.2014, in support thereof justification was also given on 5.12.2014 vide Annexure-E to this petition. It is submitted that the names of the workmen, whose cause is sought to be espoused by the Union (who are indicated to be 63), are also on record at Annexure-I. It is submitted that, considering the material on record, it cannot be said that the Reference made by the Appropriate Authority is illegal in any manner. It is submitted that this petition be dismissed.

2.2 In response to the contention raised by the learned Advocate for the petitioner, on behalf of the Union it is contended that, what is sought to be projected before this Court is, in substance, the reply of the petitioner company to some of the demands but the same can be considered by the Tribunal in the proceedings which are pending before it and the same cannot be a ground to invalidate the Reference altogether. Reliance is placed on the decision of Hon''ble the Supreme Court of India in the case of Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha , 1995 (71) FLR 102 (SC). It is submitted that this petition be dismissed.

3. Mr. Utkarsh Sharma, learned Assistant Government Pleader has supported the impugned order and has submitted that the Reference order is in accordance with law and the same be not interfered with.

4. Having heard learned Advocates for the respective parties and having gone through the material on record, this Court finds as under.

4.1 The Union had submitted the charter of demand, which is on record.

Justification in support thereof is also on record. The names of the workmen, whose cause is sought to be espoused by the Union, are also certain and the list thereof is also on record.

4.2 The power and the duty of the Appropriate Authority of the Government in this regard flows from section 10 of the Industrial Disputes Act, 1947. The law in this regard can be traced in the decision of Hon'ble the Supreme Court of India in the case of Prabhakar v. Joint Director Sericulture Department , 2015 (147) FLR 341 (SC). On conjoint consideration of the facts, statutory provisions and the proposition of law, this Court finds that the Appropriate Authority has not committed any error in making the Reference in question, either in its competence or on merits. The challenge thereto therefore needs to be rejected.

4.3 So far the contention that the principal controversy between the parties cannot be referred to under the Industrial Disputes Act, needs to be rejected for the reason that, the contention that the contract between the petitioner and the respondent contractors is not sham and bogus, can be said to be a valid defense available to the petitioner, if it is right and the same can very well be taken before the Tribunal to answer the dispute, that what is being done by the petitioner through respondent Contractors is permissible and is not prohibited under the Contract Labour (Regulation and Abolition) Act. However having valid defense is not the same as the Reference being illegal.

4.4 So far the language of the demands referred to in the Schedule is concerned, this Court finds that the language of the demands raised by the Union, appears to have been incorporated in the Reference Order to substantial extent. True it is that, the usage of vocabulary could have been better, but the same is not like referring the demands for adjudication with the findings by the Appropriate Authority. It is clarified that, what is referred to by the Appropriate Authority is as a matter of fact, disputes for adjudication before the Tribunal and the Tribunal shall answer each point raised before it, on the basis of the material placed before it and shall not be guided by the language of the Reference Order as apprehended by the learned Advocate for the petitioner. This Court finds that the proceedings before the Tribunal need not be interjected in any manner, nor there is any illegality in the Reference Order and therefore this petition need not be entertained any further.

4.5 It is clarified that this Court has otherwise not gone into the merits of the disputes contained in the Schedule of the Reference and whatever is the outcome thereof, it would be subject to the further challenge, if any, by the aggrieved party before appropriate forum in accordance with law, and the same would be examined on its own merits then.

4.6 So far the decisions relied by learned Senior Advocate for the petitioner is concerned, there cannot be any dispute with regard to proposition of law, however in view of the subsequent decision of Hon'ble the Supreme Court of India noted above, the same would not take the case of the petitioner any further.

For the reasons recorded above, this petition is dismissed. Notice is discharged.
No order as to costs.