
(2014) 01 GUJ CK 0072
In the Gujarat High Court
Case No : SCA No. 14397/2013

Paschim Railway Karamchari Parishad APPELLANT
Vs
Union of India and Another RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

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

Citation : (2014) LLR 426

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : U.T. Mishra, Advocate for the Appellant; I.H. Syed, Advocate for Respondent No. 1 and Mr. K.M. Parikh, Advocate for Respondent Nos. 1-2, Advocate for the Respondent

Final Decision : Allowed

Judgement

N.V. Anjaria, J.—At the outset, learned advocate restricts the present petition to order dated 23.7.2013 (at Annexure-A, page-14) only. He does not press the petition in respect of other orders (at page 15 to 18 as part of Annexure-A) which all are sought to be challenged in this single petition and seeks permission to file a separate substantive petition in respect of each of those orders. The permission is granted. Resultantly, this petition stands to impugn only the order dated 23.7.2013 (at Annexure-A, page 14).

1.1 RULE. Learned advocate Mr. K.M. Parikh waives service of notice of Rule on behalf of both the respondents. Upon consent of learned advocates for the parties, the matter is taken up for final consideration, making the Rule returnable forth with. The aforementioned order impugned in the petition is an order passed by the appropriate Government u/s 10 of the Industrial Disputes Act, 1947 whereby the authority has refused to refer the dispute for adjudication.

2. It appears that the President, Pashchim Railway Karmchari Parishad raised an industrial dispute between the management of the Sr. Divisional Mechanical

Engineer, W. Rly., Diesel shed, Vatva, Ahmedabad, M/s. S.N. Hira Para, Contractor, Surat and Divisional Secretary, Pashchim Railway Karmachari Parishad, Sabarmati, Ahmedabad in respect of charter of demand dated 26.04.2011. A demand was raised on behalf of the employees for regular payment of wages and the benefits of permanency in service in respect of total six employees working under the contract at D.M. Plant, Diesel Shed, Vatva, W. Rly., Ahmedabad.

2.1 Upon receipt of failure of conciliation and upon receipt of the report dated 29.05.2012 in that regard from the Assistant Labour Commissioner (C), Ahmedabad, the appropriate government being Government of India, Ministry of Labour found that the dispute was not fit for referring. Accordingly, the request to refer it for adjudication was not accepted.

2.2 For refusal, the following reason was given by the said appropriate Government.

These concerned workers are of daily wages labours and their services may also be ended on the termination/completion of that particular work. Hence, there is no merit in the case.

3. Heard learned advocate Mr. U.T. Mishra for the petitioner and the learned advocate Mr. K.M. Parikh for the respondents.

4. It is well-settled that the function of the appropriate Government while exercising power u/s 10 of the Industrial Disputes Act, 1947 regarding making a reference, is administrative function. The powers in this regard are neither judicial nor quasi-judicial in nature. It is true that in considering the question whether reference u/s 10(1) of the Act is required to be made or not, the Government is entitled to form its opinion on the aspect whether an Industrial Dispute "exists or is apprehended". However, it is always emphasised that the formation of opinion as to whether industrial dispute exists or is apprehended, is not the same as to adjudicate the dispute itself.

5. This principle is well-settled right from the decision of the Apex court in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, . In that case, the dispute was whether the convoy drivers were the employees or workmen of TELCO and whether there was relationship of employer and employee between the TELCO and Convoy drivers. In considering the question whether the reference should be made or not, the competent authority held in that case that the convoy drivers were not the workmen. On such reasoning, it refused to make reference.

5.1 What was held by the Supreme Court may be pertinently noted:

While exercising power u/s 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that, in performing this administrative function the Government cannot delve into, the merits of the dispute and take upon itself the determination of the lis, which

would certainly be in excess of the power conferred on it by section 10. It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. Where, as in the instant case, the dispute was whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function u/s 10(1) of the Act. The order of the Govt. refusing to refer the dispute on ground that the persons raising the dispute are not workmen is liable to be set aside. As the Govt. had persistently declined to make a reference u/s 10(1) the Supreme Court directed the Govt. to make a reference. (Paras 11, 13, 14, 16)

5.2 The above dictum of law was reiterated in *Sultan Singh Vs. State of Haryana and another*, and *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, . In a more recent decision, in *Sarva Shramik Sangh Vs. Indian Oil Corporation Ltd. and Others*, , the Apex Court relied on the decision of *Telco Convoy Drivers Mazdoor Singh* (supra) and reiterated the principle as under:

Thus it can safely be concluded that a writ of mandamus would be issued to the appropriate Government to reconsider the refusal to make a reference, where (i) the refusal is on irrelevant, irrational or extraneous grounds; (ii) the refusal is a result of the appropriate Government examining the merits of the dispute and prejudging/adjudicating/determining the dispute; (iii) the refusal is mala fide or dishonest or actuated by malice; (iv) the refusal ignores the material available in the Failure Report of the Conciliation Officer or is not supported by any reason.

6. Seen in the context of above legal position, the impugned order dated 23.07.2013 of the appropriate Government rejecting the request for making reference cannot sustain. It is evident from bare reading of the said order that reasons supplied amount to traveling into merits by the authority. It is observed that the workers were daily-wage labourers and their services may be ended on completion of particular work. It was observed, hence there was no merit in the case. It has acted as adjudicator in giving aforesaid reasons. This was none of the function of the authority in arriving at his decision whether reference was required to be made" or not. Its role was limited to see whether an industrial dispute exists or is apprehended between the parties. In considering the question, the authority has clearly exceeded its powers and jurisdiction by entering into adjudicatory area.

7. For the foregoing reasons and discussion, the petition deserves to be allowed. The impugned order dated 23rd July, 2013 (at Annexure/A, Page 14 of the petition) is hereby quashed and set aside. The petition is allowed. Rule is made absolute.