

(2000) 01 RAJ CK 0013
In the Rajasthan High Court
Case No : Writ Petition No. 6031 of 1998

Rambagh Palace Hotel Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-01-2000

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 2K

Citation : (2000) 86 FLR 134 : (2000) 1 LLJ 1165 : (2000) 2 WLC 338 : (2000) 2 WLN 449

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Manoj Kumar Sharma, for the Appellant; Virendra Bandhu, Kunal Rawat and Rajiv Bandhu, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—The writ petitioner-Management of Rambagh Palace Hotel Limited has filed this writ petition in the pending industrial dispute before the Industrial Tribunal, Jaipur with the submission that certain issues be decided by the Industrial Tribunal as preliminary issues and the main dispute be not entered into evidence whereas the Industrial Tribunal had in its impugned order dated October 28, 1998 (Annexure-20) has observed that, even the issues which the management want to be decided as preliminary issues require evidence and, therefore, to resolve the complete controversy between the parties it was necessary that all the issues as framed should be decided at one and the same time after recording evidence of both sides. The petitioner is aggrieved against this interim order and wants to stall the proceedings pending before the Industrial Tribunal on merits on the reference made by the State of Rajasthan in regard to the dispute raised by the workmen of the petitioner u/s 2-K of the Industrial Disputes Act.

2. Even earlier as well, the application was moved for impleading the party to the

dispute which was decided by the Labour Court on August 25, 1998, copy of which is attached as Annexure-17, when one Manohar Singh had filed an application for impleading him as the party. The present petitioner had supported him. Similar argument as is being raised now in the writ petition and has been raised in the impugned order Annexure-20 had also been raised in Annexure-17 and it was alleged by the non-petitioner No. 4 that the reference now made for adjudication by the Government was not tenable in law and it would adversely affect the alleged so called settlement made earlier. The petitioner management had also taken up a plea in Annexure-17 that earlier settlement made by other group of union was in real settlement and had allowed the non-petitioner No. 4 in the writ petition to be impleaded as party in the dispute and further had held that the reference in question cannot be held to be illegal or untenable for the reasons that the non-petitioner No. 3 had raised the demands or had contested the conciliation proceedings before the conciliation officer and pursuing the demand notice in the Industrial Tribunal. It was further held that the reference cannot be deemed to be illegal or not maintainable without recording the evidence.

3. This is so observed by the Tribunal in Annexure-20 while deciding the objection of the present management that certain issues be decided as preliminary issues.

4. The non-petitioner No. 3 had raised certain demands. The management and the non-petitioner No. 3 had participated in the conciliation proceedings. The matter was referred vide order dated February 20, 1998, copy of which reference order is attached as Annexure-10 for adjudication. The statement of claim was filed by the non-petitioner No. 3 vide Annexure-11. Reply was also filed by the petitioner vide Annexure-12. Issues were framed vide Annexure-14 on September 17, 1998 as mentioned in Annexure-14. Issue No. 2 was a issue to the effect whether there was any settlement entered on January 4, 1995 between the union and the management and if so what is its effect on the reference? Issue No. 3 was about the locus standi of the claimant for raising the industrial dispute.

5. The adjudication on the reference was being opposed not only by the petitioner management, but also by the non-petitioner No. 4 who according to the non-petitioner No. 3 is a collusive group of the management itself and is out to damage the interest of the real union, its office bearers and the total workers. It is also the contention of the non-petitioner No. 3 that the management and the non-petitioner No. 4 had colluded together to defeat the interest of the working class.

6. The management had come up with the plea that there was already bilateral settlement with the other group of workers which was binding on the non-petitioner No. 3 as well and, therefore, issues framed in this regard be decided as preliminary issue which was rejected vide Annexure-20 and had come up with the prayer that the reference Annexure-10 itself be quashed and in its place the

reference as proposed by the management be incorporated and that should be decided as a preliminary issue.

7. The Industrial Tribunal after going through the facts of the case has rightly rejected the contention of the petitioner. It is settled law that the Industrial Tribunal can only adjudicate the reference made to it by the Government and cannot substitute its own reference or terms of reference or even cannot go beyond the terms of the reference. It is the function of the Industrial Tribunal to answer the reference as is referred to and once the reference has been made on the demand made by the workers/ union. It is incumbent on the Labour Court or Industrial Tribunal to decide the same. The Industrial Tribunal is to adopt its own procedure. Powers of the Industrial Tribunal/ Labour Court are wider. If the Industrial Tribunal had decided that all the issues shall be decided together, I am of the opinion that no illegality has been committed by the Industrial Tribunal.

8. The Apex Court in the case of D.P. Maheshwari Vs. Delhi Administration and Others, Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, Mafatlal Engineering Industries Ltd. v. Mafatlal Engineering Industries Employees Union and Ors. 1991 2 LLN 286 ; Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another, and Jaipur Polyspin Ltd. Vs. State of Rajasthan and Another, relied upon on the point, had held that the Tribunal must adjudicate the dispute on merits and practice and raising of the preliminary objections to the reference was disapproved.

9. In the case of D.P. Maheshwari v. Delhi Administration and Ors. (supra), it was held by the Supreme Court that in the Industrial Tribunal there was a time when it was thought prudent and wise policy to decide preliminary issues first, but the time appears to have arrived for a reversal of that policy. It was observed that the Industrial Tribunal should decide all the issues in dispute at the same time instead of trying some of them as preliminary issues, nor should High Court in exercise of jurisdiction under Article 226 of the Constitution stop proceedings before the Tribunal so that the preliminary issues may be decided by them. It was observed as under:

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better

that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to the misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Court in this exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are required to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kind of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worth-while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues."

10. In the case of *Workmen Employed by Hindustan Lever Ltd. v. Hindustan Lever Limited* (supra) the Supreme Court observed that the practice of raising frivolous preliminary objections at the instance of the employer, questioning the dispute under reference as being not an "industrial dispute", is motivated to delay and defeat by exhausting the workmen. It was observed as under:-

"It is most unfortunate that all those unhealthy and injudicious practices resorted to for unduly delaying the culmination of civil proceedings have stealthily crept in, for reasons not unknown, in the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with the avowed object of keeping them free from dilatory practices of Civil Courts. Times without number this Court to quote only two *D.P. Maheshwari v. Delhi Administration* (supra) and *S. K. Verma v. Mahesh Chandra* (supra) disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat by exhausting the workmen the outcome of the dispute yet we have to deal with the same situation in this appeal by special leave."

"Section 10(1) confers power on the appropriate Government to refer an existing or apprehended industrial dispute, amongst others, to the Industrial Tribunal for adjudication. The dispute therefore, which can be referred for adjudication, of

necessity, has to be an industrial dispute which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it."

11. In the case of *Cipla and Ors. v. Ripu Daman Bhanot and Anr.* (supra), it was held by the Supreme Court that the Labour Court should decide all the issues preliminary or non-preliminary issues together so that the proceedings may come to an end at the earliest. The Supreme Court observed as under:-

"We would only say that the Labour Court should decide all the issues together and shall not split the issues into preliminary or non-preliminary issues so that the proceedings may come to an end at the earliest."

12. The interim award passed by the Labour Court was not sustained nor the judgment passed by the High Court by the Apex Court in *Cipla's* case (supra).

13. In the case of *Jaipur Polyspin Ltd. v. State of Rajasthan and Anr.* (supra), a single Bench of this Court had held that the High Court does not ordinarily interfere with the reference made by the Government in exercise of its power u/s 10, read with Section 12 of the Act and there was a number of decisions of different Courts, that such questions must be left to be decided by the Tribunal/Labour Court. The matter was referred in regard to bonus for the year 1982-83 to 1986-87 when as a matter of fact the bonus claimed by the workmen was for the year 1987-88 only. It was observed as under:

"The High Court ordinarily does not interfere with the reference made by the Government in exercise of its power u/s 10 read with Section 12 of the 1947 Act and there are number of decisions of different Courts, that such questions must be left to be decided by the Industrial Tribunal or the Labour Courts. The Courts are also of the view that the practice of the employer to raise objections regarding the jurisdiction of the Labour Court or the Tribunal or that of the Government to make a reference must not be encouraged because the whole object of expeditious adjudication of disputes by the Labour Court or the Tribunal is defeated if writ petitions challenging the competence of the Government to make a reference or the power of Labour Court or the Tribunal to adjudicate such disputes are frequently entertained or are entertained for asking. Nevertheless, if in a given case, the Court finds that the Government has acted in clear contravention of the provisions of law or has taken its decision on extraneous or irrelevant considerations and no investigation into dispute facts is involved the High Court can in appropriate cases interfere with the order of reference passed by the State. The words of caution which have been highlighted in the judgments of the Supreme Court in *D. P. Maheshwari v. Delhi Administration*: (supra) and *Workmen employed, in Hindustan Lever Ltd. v. Hindustan Lever Ltd.* (supra) have always to be kept in mind by the High Court while exercising its jurisdiction under Article 226 of the Constitution, where a challenge is made to the competence of the Government to make a reference of the industrial dispute for adjudication by Industrial Tribunal or the Labour Court, at the same time the

Court cannot ignore that a Constitution Bench of the Supreme Court in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*,

"While recognising the complicated question of facts, it cannot be decided merely on affidavits and whenever a serious dispute arises between the employer and the employees, such dispute should be left to be tried by the Special Tribunals constituted for the purpose:

14. In the case of *Central India Machinery Manufacturing Co. Ltd. v. State of Rajasthan and Ors.* ILR 1982 (32) Raj. 842, where the workman had questioned the bonafides of the settlement as well as its fairness, the Division Bench of this Court had observed as under:

(i) Is the settlement dated January 3, 1986 settlement arrived at during the course of conciliation and it covers the dispute referred for adjudication?

(ii) Is it open to the respondent Union to assail the validity of the settlement dated January 3, 1986 on the ground that it suffers from lack of bona fides and that it is not fair and, if so, the said settlement can be said to be invalid?

(iii) Was the settlement dated January 3, 1986 validly terminated by the respondent Union and it was not operative on the date of passing of the impugned order of reference?

The Division Bench concluded that such questions cannot be said to be pure questions of law and for the purpose of deciding them, it might be necessary to make an investigation into questions of fact. On that basis, the Court rejected the petition of the Company."

15. The Single Bench in the aforesaid case of *Jaipur Polyspin Ltd., (supra)* had found that for the reason that there was no dispute or difference between "employer" and "employee" on the question of payment for bonus for the year 1982-83 to 1986-87, therefore, the State Government ought not to have made such a reference which fact was admitted.

16. On the contrary, the counsel for the petitioner wants to rely on certain authorities *Sirsilk Ltd. and Anr. v. Government of Andhra Pradesh and Anr.* to the effect when the settlement has been arrived at between the parties - that settlement arrived at is binding on the parties. Reliance is also placed for this fact on the judgment of Karnataka High Court in the case of *Binny Limited Vs. Presiding Officer and Others*, and *J.K. Iron and Steel Co. Ltd. v. The Labour Appellate Tribunal of India Calcutta and Ors.* (1959 1 LLJ 227) (SC) wherein it was held that the adjudication under the Industrial Disputes Act does not mean adjudication according to the strict law of master and servant. An adjudicator's award may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law.

17. The arguments of the counsel for the petitioner is that once a settlement has

been arrived at, even though by a different group of union, that settlement is binding on all and it should be decided as a preliminary issue by even modifying the reference.

18. After hearing learned counsel for the parties I am not inclined to agree with the petitioner. A demand was raised by the non-petitioner No. 3 who had participated in the conciliation proceedings and the reference has been made to the Industrial Tribunal for adjudication. It is the duty of the Industrial Tribunal to decide the reference as referred and not to change or amend or substitute the terms of the reference of its own nor the industrial dispute can travel beyond the order of reference. In my opinion, the Tribunal can adopt its own procedure in conducting the case in its Court in a particular reference. In the present case, the issues had been framed and in my opinion no illegality has been committed by the Industrial Tribunal in saying in the impugned order Annexure-20 that all the issues and the matter in controversy shall be decided by leading evidence in the dispute. It has been repeatedly deprecated by the Hon''ble Supreme Court that by raising preliminary objection or asking for decision on preliminary issues I before the Labour Court is to unnecessarily I drag the workman to the Courts. Rather a mandate has been given by the Supreme Court to decide together all the issues and controversies between the parties. It has also been mandated by the Supreme Court not to interfere in the writ jurisdiction under Article 226/227 of the Constitution in such situation which may cause delay to the adjudication of the industrial dispute. In the present case in my opinion a deliberate attempt is being made either by the petitioner or by the non-petitioner No. 4 who is supporting the case of the petitioner to delay the matter for adjudication.

19. Since the passing of order impugned, though more than 15 months have passed, but no progress has been made in the case before the Tribunal despite the fact that there was no stay order passed by this Court. The record of the Industrial Tribunal is also lying in the High Court, meaning thereby that despite no stay order having been passed in the present case the proceedings had been stalled in the Industrial Tribunal unnecessarily.

20. For the reasons mentioned above, I do not find any reason to interfere in the well reasoned and legal order passed by the Industrial Tribunal. The writ petition is dismissed with a cost of Rs. 5000/- to be paid to the respondent No. 3 by the petitioner. The Registry shall send the record to the Industrial Tribunal by special messenger who shall decide the reference expeditiously and it is hoped that the parties shall co-operate in getting the matter of reference finally decided.