

(2007) 09 DEL CK 0204
In the Delhi High Court
Case No : LPA 2154-2254 of 2006

Ramesh Kumar and Others		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 06-09-2007

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 10, 10(1)

Citation : (2007) 115 FLR 1019 : (2007) 5 ILR Delhi 171 : (2008) 1 LLJ 135

Hon'ble Judges : Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Asha Jain Madan, Mukesh Jain and Dushyant Parashar, for the Appellant; Jyoti Singh and Ankur Chhibber for respondent No. 1 and Rajat Arora, for the Respondent

Final Decision : Disposed Off

Judgement

1. We have heard learned Counsel for the parties on this appeal, which has been filed by the workmen. Being aggrieved by the order dated 18th July, 2006 passed by the appropriate Government, a writ petition was filed by the workmen assailing the findings therein that the disputes raised should not be referred for adjudication under the Industrial Disputes Act. The writ petition has been dismissed by the learned Single Judge vide judgment dated 18th November, 2006, with an observation that the appellants can amend their statement of claim.

2. In order to appreciate the contentions of the learned Counsel for the parties, we have looked into the order of the Government of India, Ministry of Labour dated 18th July, 2006 whereby the Ministry had informed the workmen that the dispute in respect of which reference was sought is not fit for adjudication on the grounds mentioned in the said order. Since the said grounds have relevance for deciding the issue raised before us, we extract the said reasons herein below:

The workmen who raised the dispute did not produce any authentic documents

to show that they were engaged by the management of IOC. The contractors who had engaged the workmen are holding license under the Contract labour (R&A) Act and the principal employer (IOCL) is registered under the above said Act for engaging workmen on contract basis.

3. At the time of deciding the question as to whether or not a reference is to be made, the appropriate Government acts in the light of provisions of Section 10 of the Industrial Disputes Act. It is settled law that whether or not a reference case could be made out is an administrative decision and at that stage, no final opinion on the lis of the parties could be decided by the appropriate Government. In the present case, the appropriate Government has proceeded to decide the lis between the parties, as if they are vested with the judicial or quasi judicial power. In our opinion, Therefore, the rejection of the prayer of the workmen to make reference of the disputes is illegal and without jurisdiction. In this connection, we may refer to the decision of the Supreme Court in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, . In paragraph 13 of the said judgment it has been held that while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing the said administrative function the Government cannot delve into merits of the dispute/claims and take upon itself the task of determining the lis, which would certainly be beyond the power and the scope of Section 10 of the Act. The same proposition of law has been reiterated in other subsequent decisions of the Supreme Court like 1992 (1) PLJR 98 (SC) *V. Veerarajan and others Vs. Government of Tamil Nadu and others*, *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, , *Air India Limited Vs. Jagesh Dutt Sharma and Others*, and *ITDC v. Delhi Administration* reported in *Indian Tourism Development Corporation Vs. Delhi Administration and Others*, .

4. In the present case the issues that arise for consideration are whether there is/was any violation of the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act and whether the contract of the respondent with the private contractor is sham or camouflage. Learned Counsel for the parties agree that these are the exact issues and questions that arise for consideration, but the same have to be decided by the appropriate authority viz. the Industrial Adjudicator. It is not for the appropriate Government to consider the said disputes at the stage of deciding as to whether or not a case for reference is made out.

5. In the present case, in our considered opinion, the appropriate Government exceeded its jurisdiction in deciding the lis between the parties. The said order being contrary to the decisions of the Supreme Court, is required to be set aside, which we hereby do. We remit back the matter to the appropriate Government with a direction that the disputes, which arise for consideration and as referred to in this order, shall be referred to the appropriate Industrial Adjudicator by passing an order in accordance with law within a period of eight weeks from

today. There is an interim order passed in this case, which will continue to operate till the matter is taken up by the Industrial Adjudicator. Whether or not the stay order will be extended would be a matter to be considered by the Industrial Adjudicator.

The appeal stands disposed of in terms of the aforesaid order.