

(1957) 07 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 181 of 1956

Rivers Steam Navigation Co. Ltd. and Another	APPELLANT
Vs	
Radhanath Hazarika and Others	RESPONDENT

Date of Decision : 18-07-1957

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(2), 10(5), 2

Citation : (1957) 07 GAU CK 0004

Hon'ble Judges : Sarjoo Prosad, C.J;H. Deka, J

Bench : Division Bench

Advocate : B. Das and K.K. Banerjee, for the Appellant; S.M. Lahiri, General, D.N. Medhi, Sr. Govt. Advocate, N.M. Dam and P. Choudhury, for the Respondent

Judgement

Sarjoo Prosad, C.J.—This is an application under Article 226 of the Constitution of India in which the Petitioners have prayed for a writ of prohibition or mandamus of any other appropriate writ preventing the Respondents from proceeding with a reference u/s 10(1)(c) of the Industrial Disputes Act made to the Industrial Tribunal. The Petitioners are Rivers Steam Navigation Co. Ltd. and India General Navigation and Railway Co. Ltd. They may be compendiously described as Joint Steamer. Companies. The allegations of fact on which the, petition is founded are these:

2. The Petitioners state that during all material times upto 30th June 1956, one S.C. Dutta acted as their labour contractor at Karimganj Steamer Ghat. The relationship between S.C. Dutta and the Petitioners was governed by an agreement, the terms whereof have been embodied in a document dated 31-8-1938 signed by the Managing Agents of the Petitioners on the one hand and S.C. Dutta on the other. It is stated that under the terms of the agreement, the contractor S.C. Dutta employed various persons for handling cargoes at Karimganj Steamer Ghat and the persons so employed by S.C. Dutta worked under the latter and were not the employees of the Petitioners.

The case of the Petitioners is that these employees were paid by the said contractor and the Petitioners had nothing to do with them. It is said that it was the contractor who had the authority for fixing the hours of work and for granting or refusing leave to such workers. He had also the power to suspend, discharge or dismiss these workers and to do whatever he liked with the employment or non-employment of those persons. The Petitioners had nothing to do with them and whatever service was rendered to the Petitioners by these workers was rendered through S.C. Dutta who was an independent contractor and employed these persons for the purpose of executing the agreement which he had entered into with the Petitioners.

3. On the 30th May 1956 the Government of Assam issued a notification No. GLR. 232/56 under which it purported to refer an industrial dispute between the said S.C. Dutta, labour contractor and the workmen of Karimganj Steamerghat represented by Karimganj Dock Mazdoor Union to the adjudication of Sri Radhanath Hazarika Respondent No. 1, who was then the Judge of the Industrial Tribunal. The matters in dispute have been specified in the notification and they refer to maundage rates of handling cargoes, the sort of housing and medical facilities and leave rules to which the workers claim to be entitled and the arrangement if any, that should be made by the contractor for the improvement of housing and medical facilities and introduction of leave rules and pay of the chowkidars.

A copy of the notification in question is an annexure to this petition. S.C. Dutta, the labour contractor was a party to the proceedings before the said Tribunal on the terms of the reference. It appears however that the Tribunal issued a notice on the Petitioners directing them to file their written statements. The Petitioners protested against this notice on the ground that they were not parties to the reference and the Tribunal had no jurisdiction to require the Petitioners to file any written statement in that proceeding. This plea prevailed with the Tribunal. In the meantime, on 30-6-1956, S.C. Dutta died.

The case of the Petitioners is that although they had not issued any formal letter of appointment to his son Sunirmal K. Dutta, yet Sunirmal Dutta had taken over charge of the work of the contract of his late father and that he was already working under them as such. They actually sent a letter of appointment to Sunirmal Dutta on the 27th July, 1950 purporting to confirm his appointment as contractor with effect from the 1st of that month on the same terms as contained in the contract dated 31-8-1938 between the Petitioners and the late S.C. Dutta. According to the Petitioners Sunirmal Dutta accepted this letter of appointment intimation whereof was received by them on the 9th August 1956.

Then it appears that on the 16th July 1956, the Joint Secretary of Karimganj Dock Mazdoor Union wrote in the Labour Officer, Cachar suggesting that the workmen who were employees of the Petitioners should be directly employed under them and that there should be no contractor or middleman in between. This led to a conciliation proceeding in which the Petitioners refused to appear.

Meanwhile on 11-8-1956, the Government of Assam issued a fresh notification amending the earlier one and adding the management of the Petitioners as a second party to the dispute referred to the Industrial Tribunal by virtue of their notification dated 30-5-1956.

In the later notification it was stated that since the labour contractor had died and no new contractor had been appointed in his place, in partial modification of the earlier notification, Government directed that the management of the Petitioners Company should be impleaded as a party to the proceeding. This was followed by another notification on 4-9-1956. As the terms of this notification have assumed some importance on the arguments, it is as well to reproduce it here:

No. GLR. 232/56. In supersession of this Department Notification No. GLR. 232/56 dated 11-8-1956 the Governor of Assam is pleased to order the following:

1. Add (i) The Management of R.S.N. and I.G.N. Rly. Co. Ltd. Karimganj and (ii) Shri Sunirmal K. Dutta, new Labour Contractor C/o. Sub-Agent. R.S.N. and I.G.N. and Rly. Co. Ltd. Karimganj as the 2nd party to the dispute.

2. Add the following as issue No. (c) in the Schedule to this Department Notification No. G.L.R. 232/56 dated 30th May, 1956.

(e) Is the Union justified in its demand for abolition of the post of Labour Contractor and direct employment of workers by the Company?

4. The Petitioners challenge the above notification and contend that the Government had no jurisdiction to make any such reference impleading the Petitioners as parties to dispute when neither in fact nor in law any such dispute existed between the Petitioners and the workmen in question. The whole case of the Petitioners on this point is, as it has been stated earlier, that these workmen were working under the labour contractor who was an independent contractor and these workmen were therefore employees not of the Petitioners but of the contractor and there was no contractual nexus between the workmen and the Petitioners' management.

Government therefore had no jurisdiction to implead as parties to a dispute the Petitioners who had no concern with the dispute in question. In support of this argument, the Petitioners have relied upon the terms of the agreement entered into between S.C. Dutta on the one hand and the Petitioners on the other. This agreement is dated 31-8-1938. Mr. Das on behalf of the Petitioners has invited our attention to the various terms of this, document, in order to show to us that no contractual relationship existed between the Petitioners and the workers. The workers on the contrary have averred, as it appears from the affidavit in opposition) filed by one Rajgir Singh, the Joint Secretary of the Karimganj Dock Mazdoor Union, that the status of the contractor S.C. Dutta, deceased, was that of a mere commission agent of the Petitioners Company and that the wages of the workmen paid every month from the funds of the Company; they were paid

according to scheduled rate fixed by the Company and the Company used to make good the deficiency if the workers, at the maundage rates, could not earn the guaranteed minimum of Rs. 45/- per month each, as fixed by the Company.

The workers contend that the contractor only got as his remuneration a commission at the rate of half anna per rupee on the total monthly bill of wages of the workmen and the appointment, dismissal, discharge and other conditions of service of the workmen were in the hands of the Petitioners. Company, though made through the contractor,, the rent-free "housing" of the workmen, which formed a part of their wages, had to be provided by the Company and was its direct responsibility. "Therefore according to them they did not recognize S.C. Dutta as their employer and they never accepted the position that they were not employed by the Petitioners Company. It is to be remembered that whatever the nature of the contract may be between the Petitioners and S.C. Dutta, the work men were not parties to the contract and the matter whether the workmen are really employees of the Petitioners -- the Joint Steamer Companies or employees of the contractor will have to depend upon a consideration of the evidence in the case.

The decision of the point does not rest merely on the construction of the agreement dated 31-8-1938. It is therefore too early to say at this stage that there was no dispute between the Petitioners and the workmen and therefore Government had no authority to refer any such dispute for the decision of the Industrial Tribunal. We desire to say as little as possible on this point lest it might prejudice the merits of the claims put forward by the respective parties. This would be a matter on which the Industrial Tribunal itself is called upon to pronounce after taking in view the evidence adduced in the case. We are therefore unable to entertain the contention of Mr. Das that there was no industrial dispute within the meaning of the law which could form the basis of a valid reference u/s 10 of the Industrial Disputes Act. In our opinion the notification issued by the Government on 4-9-1956 making the Petitioners a party to the dispute therefore could not be attacked on this ground.

5. The second contention of Mr. Das is that once having made a reference u/s 10 of the Industrial Disputes Act, the Government had no authority to make any changes or modifications to the said notification. The learned Counsel points out that in the earlier notification making the reference the dispute was confined merely to the workmen on the one hand and the contractor on the other.

He submits that on the terms of the notification dated 4-9-1956 it appears that Government had superseded the earlier notification dated 11-8-1956. He contends that this supersession could not be possible u/s 10 of the Industrial Disputes Act or any other provision" of the law; and inasmuch as Government purported to issue a notification of this kind, the notification is invalid. In support of his contention the learned Counsel has relied upon a decision in D.N. Ganguly and Others Vs. State of Bihar and Others, It was held in that case that though u/s 10(2) and the proviso to Section 10(1) of the Industrial Disputes Act

Government are empowered to make a reference in their discretion, yet where a dispute exists, there is statutory obligation on the Government to make such a reference provided the conditions prescribed are satisfied.

It was also held there that there was no express provision either u/s 10 or any other section of the Act empowering the State Government to withdraw a reference after once it had been validly made to the Industrial Tribunal. Reliance was placed on Section 21 of the General Clauses Act in support of the argument that the State Government had implied power of revoking the reference. It was argued that the authority having the power to make a reference had also the power to revoke the same. This contention was overruled by the two learned Judges on the ground that Section 10 imposed a statutory duty on the Government to make a reference provided a dispute existed and once a reference has been made then Section 21 of the General Clauses Act could not be invoked to support the contention that Government could of their own accord withdraw the reference which they had already made; then the reference made u/s 10 of the Industrial Disputes Act had to take its course as required by the law. The observations in this judgment therefore in my opinion, do not support the contention of Mr. Das that it was not open to the State Government even to modify the notification which they had made earlier impleading the Petitioners as a party to the dispute. Mr. Das in particular relies upon a passage in the judgment of Das C.J., as he then was, where his Lordship observes thus:

Speaking personally, I think that it will depend on the nature of the amendment, etc. My learned brother has referred to certain other provisions of the Industrial Disputes Act, and I do not think that the power of amendment, etc., given by Sec. 21. General Clauses Act can be so used as to nullify the other provisions of the Industrial Disputes Act.

His Lordship does not hold that in no case an amendment is possible. All that he says is that no such amendment would be permissible so as to nullify the provisions of the Industrial Disputes Act. Mr. Das has been unable to point out to us that by the amendment in the instant case any of the provisions of the Industrial Disputes Act have been nullified. He referred to Section 10 of the Act and the proviso thereunder, to support his contention; but in our opinion the justification for the amendment would follow from the terms of Section 10 itself.

Mr. Das concedes that it was open to Government to make a fresh reference if it thought that a dispute existed between the Petitioners on the one hand and the workmen on the other. This could be done u/s 10 of the Act. If this was possible and if the same Tribunal could proceed to deal with the matter, as the learned Counsel concedes even simultaneously, I am unable to see why the amendment, by virtue of that power, could not be permitted. The power to make the amendment of the nature with which we are concerned in the present case therefore flows from Section 10 itself; because if in a given case by some mistake or oversight a person or a party whose presence was necessary for a proper adjudication of the industrial dispute is not made a party, then it would be

the clear duty of the Government making a reference u/s 10, to make such a person a party to the dispute, even by a subsequent notification. Otherwise the reference itself would be rendered infructuous and the duty or the obligation which the statute imposes upon the Government would not be carried out.

For this reason we have no doubt that Government had the power on the terms of Section 10 of the Industrial Disputes Act itself read with Section 21 of the General Clauses Act to make the proposed amendment. Indeed that this was a matter of mere form and not of substance has been recognized by a decision of the Madras High Court in *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*, Venkatarama Aiyar J., as he then was, who delivered the judgment in that case held that the objection that Government had no jurisdiction to amend a reference made u/s 10 of the Industrial Disputes Act is one of form and not of substance. It were open to Government to make u/s 10 an independent reference concerning any matter not covered by the previous reference, the fact that it took the form of an amendment to the existing reference and not an additional reference was a mere technicality which did not merit any consideration. I should think that Sub-section (5) of Section 10 or Sub-section (5) of Section 20 which though in terms may not be applicable to an amendment of this character, do in addition support the inference that such an amendment would be permissible in law to give effect to the provisions of the statute. This contention also therefore in our opinion does not carry conviction.

6. The next argument advanced by Mr. Das is that the new issue which has been framed under the notification in question, i.e., "is the Union justified in its demand for abolition of the post of Labour Contractor and direct employment of workers by the Company," does not fall under Industrial Dispute at all; and therefore such an issue could not be referred for adjudication to the Industrial Tribunal. He refers in this context to Section 7A(1) of the Act as it now stands. It is provided there that the appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule; and he refers to the various items specified in those schedules to support his contention that an issue of this character seeking for abolition of the post of a contractor does not fall under any of the items enumerated in either of the schedules.

It appears to me however that it is unnecessary to go to the schedules for this purpose because an issue of this kind should be covered by the definition of "industrial dispute" as given in Section 2(k) of the Act. "Industrial dispute" as defined in the Act means any dispute or difference between employer and employees, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Whether the workmen should work directly under the Petitioners or through the agency of a contractor is a matter connected with the employment or terms of employment or conditions of service of these workmen and it cannot be said that such a

matter does not fall at all within the purview of "industrial dispute". Mr. Lahiri contends that the issue may well come under item 1 of the Third Schedule -- "Wages, including the period and mode of payment" -- because according to him the contention of the workmen is that the contractor takes a share out of the wages payable to these Petitioners, the workmen, which the workmen do not approve of.

Whatever the position may be, we are at this stage not prepared to go into these disputed questions of fact; but it seems to us that on the definition of the term "industrial dispute" itself we are unable to hold that an issue of this kind is altogether precluded from consideration. Mr. Lahiri has also referred to a decision in AIR 1949 111 (Federal Court) It was held there that:

the words "employment and non-employment" in the definition of industrial dispute in Section 2(k) are of widest amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. The words "in connection with" further widen the scope of the dispute and do not restrict it by any means. "Any dispute connected with employment or non-employment" would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the courses of their being out of service or any other question and it would also include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workers.

It should also be pointed out that the reference made by the Government is on the authority of Section 10 of the Industrial Disputes Act and that section provides that where the appropriate Government is of opinion that any dispute exists or is apprehended, it may by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Tribunal for adjudication. These words in our opinion are of sufficient amplitude to cover an issue of this character. We are therefore unable to entertain the contention of Mr. Das that the State Government had no jurisdiction to refer the issue mentioned in the notification dated 4-9-1956 for adjudication by the Industrial Tribunal.

7. Mr. Das further drew our attention to certain averments in the petition which are to the effect that Section 10 of the Industrial Disputes Act is ultra vires Arts. 14 and 19(1)(g) of the Constitution of India; but the learned Counsel very frankly conceded that he was not prepared to urge the contention in that extreme form. The point appears to have been dealt with in a recent judgment of the Supreme Court in *Nimla Textile Finishing Mills Ltd. v. 2nd Punjab Tribunal* (S) AIR 1957 SC 329 where it was held that:

having regard to the provisions of the Act it is clear that Section 10 is not discriminatory in its ambit and the appropriate Government is at liberty as and when the occasion arises to refer the industrial disputes arising or threatening to arise between the employers and the workmen to one or the other of the authorities according to the exigencies.

It is obvious that no two cases are alike in their nature and the industrial disputes which arise or are apprehended to arise in a particular establishment or undertaking, have to be treated with reference to the situation prevailing in the same. Therefore the reference to one or the other of the authorities has necessarily got to be determined in the exercise of its best discretion by the Government. Such discretion is neither unfettered nor uncontrolled because the criteria for the exercise of such discretion are indicated in the terms of the Act itself. Mr. Das urges that if the power to make an amendment is read in Section 10 of the Act, then it would be obviously concerning an unreasonable discretion to the State Government to discriminate. We are unable to accept this contention. There is no warrant for the assumption as pointed out by the Supreme Court in that case that the discretion given to the State Government u/s 10 will be exercised by the Government arbitrarily or capriciously so as to prejudice the interests of any of the parties concerned. It must be therefore held that Section 10 of the Act cannot be held to be constitutionally void as infringing the provisions of Arts. 14 and 19(1)(f) and (g) of the Constitution.

8. In the view which we take of the various points urged by the learned Counsel for the Petitioners, it is unnecessary for us to deal with the arguments of the learned Advocate General that the application is defective in that the Industrial Tribunal has been constituted afresh and that the present member of the Tribunal is not a party to the application. We think that there is no substance in this application which is accordingly rejected and the rule is discharged. The Respondents are entitled to their costs; hearing fee Rs. 100/-.

Deka, J.

9. I agree.