
(1985) 10 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Case No. 771 of 1978

Rourkela Workers Union

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 08-10-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1986) 1 OLR 25

Hon'ble Judges : K.P. Mohapatra, J;J.K. Mohanty, J

Bench : Division Bench

Advocate : C.V. Murty, for the Appellant; N.C. Panigrahi, Additional Government Advocate and B. Panda, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mohanty. J.

1. This is an application under Article 226 and 227 of the constitution of India by the Rourkela Workers Union, a trade union functioning in the Rourkela Steel Plant for quashing the order of the State Government dated 20.3.1978 (Annexure-4) refusing to refer an industrial dispute for adjudication under the provisions of the Industrial Dispute Act.

2. The petitioner Union submitted a 14 point charter of demands to opposite party No. 2 M/s. Hind Timber Mart. Rourkela. The petitioner Union moved opposite party No. 2 several times from 1974 and finally on 19.8.1976 for lifting the lock-out and settling the disputes and sent a copy of all the letters including the last letter to opposite party No. 3 the Assistant Labour Officer. Rourkela, vide Annexure-1. Opposite party No. 3 initiated a conciliation proceeding and called upon both the parties to state their case. Opposite Party No. 2 refused to participate in the proceeding. Opposite party No. 3 by his report dated 1.11.1977 reported failure of the conciliation vide Annexure-3 to the State Government opposite party No. 1. The State Government in the Labour,

Employment and Housing Department on a consideration of the above report of the Assistant Labour Officer intimated the petitioner that "the State Government are satisfied that there is no case for reference of the dispute for adjudication as the Union failed to substantiate the complaint.

3. On behalf of the petitioner it is contended that opposite party No. 1 acted contrary to law and in excess of the jurisdiction in refusing to make a reference on the ground that there was no case and the petitioner-Union failed to substantiate the complaint. The order in Annexure-4 is a non-speaking one and does not contain any reason for refusal and as such is not in accordance with the provisions of Sections 12(5) and 10(1) of the Industrial Disputes Act (hereinafter called the "Act"). In reply, on behalf of the opposite parties it is contended that the power conferred on the appropriate Government in an administrative power and the action of the Government in making the reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny.

On behalf of the petitioner reliance was placed on a decision reported in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, wherein it has been held.

"When the appropriate Government considers the question as to whether a reference should be made u/s 12(5) it has to act u/s 10(1) of the Act, and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4) the appropriate Government ultimately exercises its power u/s 10(1), subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and failure report has been made u/s 12(4)"

Reference has also been made to a recent decision of the Supreme Court reported in *Nirmal Singh Vs. State of Punjab and Others*, wherein it has been held:

"Where the Labour Commissioner while exercising the powers of the State Government u/s 12 for making reference declined to refer the dispute for adjudication on the ground that the delinquent, a bank employee, was not a "workman" within the meaning of Section 2(s) but no reasons were given by him to justify that conclusion, all that he has stated in his order was that the post held by the delinquent did not fall within the category of "workman", the Supreme Court declined to remand the matter to the Labour Commissioner asking him to state his reasons why the delinquent was not a workman as it would entail delay, and therefore, from the point of view of not only the delinquent but the Bank also, directed the Labour Commissioner to make a reference either to the Labour Court or to the Industrial Tribunal u/s 12(5), as he

considers proper."

On behalf of the opposite parties a decision reported in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, wherein it has been held:

Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended, The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstance of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on these matters."

Also reliance was placed on a decision recorded in State of Bombay Vs. K.P. Krishnan and Others, and it was submitted that it is only the Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a Court of law. But such is not the case here.

4. The decision cited on behalf of the petitioner reported in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, and Nirmal Singh Vs. State of Punjab and Others, fully support the contention of the petitioner. The order in Annexure-4 does not give any reason whatsoever of not making a reference specially when the dispute has come through conciliation and a failure report was submitted u/s 12(4) of the Act. The decisions cited on behalf of the opposite parties have no application to the facts and circumstances of this case.

5. After considering the facts and circumstances of the case we are of the view that Annexure-4 is a non-speaking order and the reasons for coming to the conclusion have not been mentioned therein. In dealing with the industrial dispute in respect of which a failure report has been submitted u/s 12(4) of the Act the appropriate Government ultimately exercised its power u/s 10(1) of the Act subject to this that Section 12(5) imposes an obligation to record its reasons for not making a reference when the dispute had gone through conciliation and failure report has been given under Section. 12(4) of the Act.

6. In the result, therefore, we quash the impugned order in Annexure-4 and

issue a writ of mandamus to the State Government, opposite party No. 1, to consider the failure report afresh and decide whether areference under Section. 10(1) read with Section 12(5) of the Act shall be made to the appropriate Tribunal. We make no order as to costs.

K.P. Mohapatra, J.

7. I agree.