
(1997) 08 KL CK 0034
In the High Court Of Kerala
Case No : O.P. No. 7415 of 1992

Secretary, K.J.H.S.W. Union

APPELLANT

Vs

Industrial Tribunal

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1998) 1 LLJ 574

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : P.C. Sasidharan and P.V. Mohan, for the Appellant; N.D. Premachandran, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner challenges Ext.P1 award of the Industrial Tribunal, Kollam. Denial of employment to 7 workers was referred for adjudication. Management raised a preliminary objection stating that there is no valid industrial dispute as no charter of demands were placed before the management. Since there is demand by union and denial by the workman there is no industrial dispute. Tribunal accepted the above. Tribunal relied on the decision of the Supreme Court in The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, A Constitutional Bench of Supreme Court in State of Madras Vs. C.P. Sarathy and Another, formulated four propositions:

- (i) The Government should satisfy itself on the facts and circumstances brought to its notice in its subjective opinion that an industrial dispute exists or is apprehended;
- (ii) the factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the Government to decide;
- (iii) the order making a reference is an administrative act and it is not a judicial or a quasi judicial act;

(iv) the order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Article 226 of the Constitution to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended.

Though these propositions were based on the unamended Act, which did not contain the words "where the appropriate Government is of opinion", the Court implied the formation of subjective opinion by the appropriate Government, in the words "if any industrial dispute exists or is apprehended."

2. In *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, Supreme Court held that Government without going into the merit of the case if it is of the opinion that there is an industrial dispute, its function is only to refer the matter to the Tribunal. Section 10(1) enables the appropriate Government to make reference of an industrial dispute which exists or is apprehended "at any time" between the parties mentioned in the Section. How, and in what manners, or through what machinery, the Government is apprised of the dispute is not relevant. In *Western India Match Co. Ltd. v. Western India Match Co. Workers Union* (supra) Supreme Court observed as follow at pp 261-262:

"Ordinarily the question of making a reference would arise after conciliation proceedings have been gone through and the Conciliation Officer has made a failure report. But the Government need not wait until such a procedure has been completed."

Therefore, it is clear that if there is an apprehension of an industrial dispute, it can be referred for adjudication even without a conciliation proceeding and even without a specific demand and the denial in making of an order of reference.

3. In *The Management of Pradip Lamp Works, Patna City Vs. The Workmen of the Pradip Lamp Works, Patna and Another*, it was held by the Supreme Court that when there was an intended strike there is an "apprehended" industrial dispute. Order of reference is not usually amenable to judicial review by this Court also. In certain circumstances it may be amenable to Judicial review. (See *Rohtas Industries Vs. S.D. Agarwal and Others*, at page 715, *Shambu Nath Goyal Vs. Bank of Baroda*, and *Sindhu Resettlement Corporation Limited v. Industrial Tribunal of Gujarat* (supra). Judicial review may be possible in certain circumstances like where it is patent that referring Government is not "appropriate Government" where there is no industrial dispute at all, or the activity is not an industry or reference is contradictory to law or disputes are admittedly covered by a settlement of previous award. Even in such cases if matters are disputed it is proper to file objection before the Industrial Tribunal or Labour Court and after adducing evidence of these points if the Tribunal comes to the conclusion that there is no valid industrial dispute, it can pass an award accordingly. However, a Tribunal which is the creature of the statute, cannot enter upon the considerations as to whether the pre conditions empowering the

State Government to make the reference existed or not. However, on the basis of the evidence found that what is referred is not an industrial dispute or activity is not an industry or order of reference contradictory to law or dispute is referred is already covered by the settlement of previous award or order of reference was not made by the appropriate government with jurisdiction etc. validity of reference can be examined by the Tribunal. Tribunal cannot say that formation of the opinion by the Government that an industrial dispute will exist is not correct.

4. In Sindu Resettlement Corporation Ltd. case (supra) relied on by the Tribunal it was only held that what was referred to the Tribunal was not the subject matter for the controversy between parties and hence not the existing or apprehended dispute. When the retrenched employee and the Union had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement, the reference made by the Government u/s 10 in respect of reinstatement is not competent. The only reference which the Government could have made had to be related to payment of retrenchment compensation alone and not regarding the reinstatement. It was also found by the Supreme Court that concerned employee in that case was legally not entitled to reinstatement. The facts of the case are entirely different. In Shambu Nath Goyal v. Bank of Baroda (supra) stated by the Supreme Court that when parties are at variance and the dispute or difference is connected with the employment, or non employment or the terms of employment or with the conditions of Labour, there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to rewriting the Section. It was further held as follows:

" The power conferred by Section 10(1) on the Government to refer the dispute can be exercised not only where an industrial dispute exists but when it is also apprehended. From the material placed before the Government, Government reaches an administrative decision whether there exists an industrial dispute or an industrial dispute is apprehended and in either event it can exercise its powers u/s 10(1). But in making a reference u/s 10(1) Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi judicial determination."

Apart from the above, Section 2A of the Industrial Disputes Act enables workers to raise industrial dispute in the case of dismissal or discharge.

5. The next defect in the order of reference found by the Tribunal was that workers were actually dismissed but what is referred is denial of employment. Denial of employment of workers by Management can be by different methods. It can be by dismissal, discharge, superannuation, illegally disallowing the

employee to attend the company, by removal of name from the roll etc. Dismissal of an employee is one method of denial of employment. If it is found that worker is dismissed what is to be considered is whether denial of employment by way of dismissal is correct or not. Therefore, it cannot be stated that the employees were dismissed and therefore, there is no denial of employment. Tribunal has to adjudicate the dispute on merit. As held by the Division Bench of the Bombay High Court in Sheshrao Bhaduji Hatwar Vs. P.O., First Labour Court and others, mere wording of the reference is not decisive in the matter of ten-ability of a reference. Eventhough Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again. Reference can be made in wider terms. In many disputes, the reference is cryptic and is not properly worded. But in such case the Tribunal should look into the pleading and find out the exact nature of pleading, of the petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits held in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, at page 431. According to the Management there is no employer- employee relationship and workers are not legally entitled to any relief. I am not expressing any opinion regarding the merits of the case. It is for the Tribunal to decide and adjudicate the matter and pass a composite award on merit including the jurisdictional questions according to law. Therefore, the Original Petition is allowed by way of remand.