
(1997) 01 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.R. No. 1977 of 1996

Shubh Timb Steels Ltd.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 01-01-1997

Acts Referred:

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

Citation : (1998) 1 LLJ 253 : (1997) 2 ShimLC 1

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Ramakant Sharma, for the Appellant; Inder Singh, A.G., for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—In this writ petition, the validity of a reference made by the Government to the Labour Court by its order dated November 2, 1996 is challenged. The order of reference refers to a report of the Labour Inspector, who is 3rd respondent herein u/s 12(4) of the Industrial Disputes Act and it states that after considering the matter u/s 12(5) of the Act, it is found that the dispute is a fit one to be referred to the Labour Court. Consequently, two questions have been referred to the Labour Court for consideration. One relates to the legality and justification of lay off resorted to by the Management in respect of 16 workers w.e.f. September 2, 1996. The other question relates to the demands raised by the workers' union with the Management vide their demand notice dated August 22, 1996.

2. There is no dispute whatever that the Government is entitled to make a reference under the provisions of the Act, nor can there be any dispute that there is a dispute between the parties with regard to the matters in question. What is contended before us is that there is a subsisting settlement between the parties as evident from Annexure P-2 and so long as the settlement is in force, there cannot be a financial demand and the Government has over-

looked the subsisting settlement. A perusal of Annexure P-2 shows that it is not a settlement u/s 18 (3) of the Act. It appears that it is u/s 18(1) of the Act. If at all it can be treated only as agreement between the actual parties thereto. The designation of the signatories on the side of the workers, union is not mentioned in the document. It is not clear whether the four persons, who have signed the agreement are the office bearers of the union and whether they are entitled to represent the union at all. In such circumstances, Annexure P- 2 cannot be considered to be a settlement binding on all the workers of the establishment without further evidence.

3. Our attention is also drawn to Annexure P-9, which is communication from the workers' union to the Managing Director of the petitioner. That is dated August 22, 1996. That refers to a settlement arrived at between the Management and the union, which came to an end on June 30, 1996. Obviously, the reference is not an agreement, which is under Annexure P-2 dated February 28, 1995. It follows that there was an earlier settlement and that had come to an end, according to the communication on June 30, 1996. Several demands have been raised in the communication. It is only with reference to such demands, the Government has made an order of reference to the Labour Court.

4. The next contention raised by the learned Counsel is that the Government has not considered the relevant materials on record before making the order of reference. According to learned Counsel, a communication was sent to the Conciliation Officer by the Petitioner on October 8, 1996, in which reasons for the lay off were set out and a reference was made to para 18 (1) of the Certified Standing Orders of the Company. It is contended that thereafter there was no attempt by the Conciliation Officer to conduct any conciliation proceedings and straightaway a report was sent to the Government with regard to the failure of the conciliation proceeding. It is submitted that the Government ought to have considered the provisions of para 18(1) of the Certified Standing Orders and taken note of the fact that the layoff is for a temporary period and it is not a permanent lay-off. Whatever it may be, that cannot be a ground vitiating the reference as such. Once the competency of the Government is accepted and it is proved that there is a dispute between the parties, then there can be no invalidity in the reference made to the Labour Court.

5. The Supreme Court had occasion to consider the powers and duties of the Government u/s 10 of the Act in *Bombay Union of Journalists and Ors. v. The State of Bombay and Anr.* (1964) 1 LLJ 351 Bom at pp 354-355. The Court observed as follows:

"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 a failure report has been made u/s 12(4). This question has been considered by this Court in the case of *State of Bombay Vs.*

K.P. Krishnan and Others, The decision in that case clearly shows that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider, prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10(1), and so, the argument that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of services of appellants 2 and 3, cannot be accepted."

6. If the above principles are applied in this case, there can be no doubt whatever that the reference is not in any manner vitiated and we have to uphold the validity of the reference in this case. Consequently, this writ petition fails and is dismissed.

C.M.Ps.No. 4154 and 4155/1996:

In view of the dismissal of the writ petition, these applications are also dismissed.