
(2003) 11 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (Criminal) No's. 11 and 118 of 2003

Simadri Pattanaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

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

Citation : (2003) 11 OHC CK 0014

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Amitav Das, S.K. Mandal and S.S. Jena, for the Appellant; Additional Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. It is undertaken by Mr. Das that the notarial fees shall be paid in course of the day.
2. Heard Mr. Das, learned Counsel for the petitioner for the petitioner and the learned Counsel for the State.
3. The petitioner, who is a workman, challenges the order dated 13.02.2002 issued by the Government of Orissa, Labour & Employment Department refusing to refer the matter in terms of Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The ground on which the impugned order is challenged that it is a non-speaking order and no reason has been assigned while refusing to make reference. The further facts as delineated the writ application tend to reveal that the petitioner claiming to be a workman under the opp. party No. 3 raised an industrial dispute before the Labour Commissioner, Jeypore and the conciliation ultimately ended in failure for which a report was submitted to the Government in Department of Labour & Employment. The order so impugned is the order of refusal by the appropriate Government to make a reference u/s 12(5) of the Act. The impugned order reads as follows:

On consideration of the above referred report and in exercise of the powers conferred by Sub-section (5) of Section 12 of the Industrial Disputes Act, 1947 the State Government are satisfied that there exists no case for reference for reference for adjudication being devoid of merit.

4. Sub-section (5) of Section 12 of the Act speaks as follows:

Section 12. Duties of Conciliation Officers -

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(5) if, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

5. In the impugned order so communicated to the petitioner does not indicate any reason for refusal to refer the same. The prayer of the petitioner being to set aside the aforesaid order and direct the opp. parties/appropriate Government to take a fresh decision on the failure report of the Conciliation Officer, the matter was taken up for final disposal.

6. Law is well settled in this regard that while exercising power u/s 10(1) the Government performs administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. Xxx Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of powers. If the administrative determination is based on grounds irrelevant extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review, Xxx Therefore, if the grounds on which or the reasons for which the Government declined to make a reference u/s 10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. Xxx It is equally well settled that whether the Government purports to give reasons which tantamount to adjudication and refuses to make reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. (See Ram Avtar Sharma and Others Vs. State of Haryana and Another,).

7. The case at hand is still worse. No reasons have been ascribed for refusing to make reference. Accordingly, the writ application is allowed. The opposite parties

are directed to reconsider their decision and to exercise power u/s 10 of the Act on considerations relevant and germane to the decision. Accordingly, the impugned order is set aside. Let the aforesaid exercise be done within a period of three months from the date of receipt of this order.

8. Urgent certified copy of the order be granted as per rule.