
(1969) 09 MP CK 0008
In the Madhya Pradesh High Court

Singh (K.P.) and Another	Vs	APPELLANT
Gokhale (S.K.) and Another		RESPONDENT

Date of Decision : 02-09-1969

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10, 10A, 2

Citation : (1974) ILR (MP) 1016 : (1970) 1 LLJ 125 : (1968) MPLJ 890

Hon'ble Judges : P.K. Tare, J;K.L. Pandey, J

Bench : Division Bench

Judgement

P.K. Tare, J.

In this petition under Articles 226 and 227 of the Constitution of India, petitioner 1, an employee of respondent 2, National Coal Development Corporation, Ltd., Jamuna Colliery, P.O. Kotma, challenges the award of respondent 1 (annexure 13) on the ground that the arbitrator had no jurisdiction to proceed with the arbitration proceedings in the absence of the procedure to be followed as prescribed by S. IDA of the Industrial Disputes Act, 1947 (Central).

Respondent 2, employer, and petitioner 2, M.P. Koyla Mazdoor panchayat, a registered union, tried for conciliation of their dispute through the machinery of conciliation ; but the conciliation proceedings did not fructify. However, by an agreement dated 14 January 1966, they entered into an agreement (petitioner"s annexure 7) referring the industrial dispute for arbitration by the sole arbitrator, S.K. Gokhale. Regional Labour Commissioner (Central), Jabalpur, for adjudication of the following points of dispute:

(1) Whether the transfer of K.P. Singh; shot flrer (Gassy Mine), and G. Joshi, assistant storekeeper, was effected by the management from Jamuna Colliery to Talcher (Orissa field and Surakachar-Korba region), respectively, with a view to weaken the M.P. Koyla Mazdoor Panchayat at Jamuna Colliery.

(2) Whether K.P. Singh"s refusal to comply with the transfer orders was Justified

and whether K.P. Singh is entitled to any relief for the period that he has remained unemployed as a result of his refusal to comply with the transfer orders.

(3) What other consequential arrangements should be made on the basis of the determination of the first two issues.

The parties agreed to be bound by the decision of the arbitrator.

At the stage it may be relevant to reproduce Section 10A of the Industrial Disputes Act, 1947, which is as follows:

Sub-section (1).-Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time, before the dispute has been referred u/s 10 to a labour court or tribunal or national tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a labour court or tribunal or national tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

Sub-section (1A).-Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

Sub-section (2).-An arbitration agreement referred to in Sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

Sub-section (3).-A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within (one month) from the date of the receipt of such copy, publish the same in the official gazette.

Sub-section (3A).-Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in Sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

Sub-section (4).-The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

Sub-section (4A).-Where an industries dispute has been referred to arbitration

and a notification has been issued under Sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lookout in connection with such dispute which may be in existence on the date of the reference.

Sub-section (5).-Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to arbitrations under this section.

The learned Counsel for the petitioners urged that the arbitration agreement having been entered into under Sub-section (1) of Section 10A of the Act, and the agreement having been executed in form C, as per Sub-section (2) of the said section, it was necessary to follow the procedure prescribed by the other sub-sections of the said section. It was pointed out that the procedure prescribed by Sub-section (3) was not followed. It is true that the provision in Sub-section (3A) is optional and dependent on the satisfaction of the appropriate Government, but the award has to be communicated through the appropriate Government as per Sub-section (4) and it is only after a notification under Sub-section (4A) that a strike or lockout can be declared illegal. Sub-section (5) excludes the operation of the Arbitration Act, 1940.

The learned Counsel for the petitioner urged that on account of the failure to follow the procedure prescribed by Section 10A of the Act other unions which may be interested in the general questions referred to arbitration, were prevented from having their say before the arbitrator. It was pointed out that the entire arbitration proceedings are vitiated as the arbitrator purported to follow a procedure which may be in consonance with a private arbitration and which was definitely opposed to the specific provision of Section 10A of the Act, therefore, it was urged that the award will be no award in the eye of the law and the same deserves to be quashed. Further, it was pointed out that the provisions of the Arbitration Act, 1940, being inapplicable, the petitioners would have no remedy under the law except to approach this Court by seeking writs of certiorari and mandamus.

In this connexion, we might observe that a Division Bench of the Bombay High Court in *Air Corporations Employees' Union and Another Vs. D.C. Vyas and Others*, , laid down that the arbitration contemplated by Section 10A of the Industrial Disputes Act, 1947, would have all the essential attributes of a statutory arbitration u/s 10 of the Act; and that the power of superintendence of the High Court under Article 227 would always be there as the arbitrator would be functioning as a quasi-Judicial body and his orders could be corrected by the High Court in exercise of prerogative powers under Articles 226 and 227 of the Constitution of India. The learned Judges expressed the opinion that in substance there would be no difference between the statutory arbitration as contemplated by Section 10 and a voluntary arbitration as contemplated by Section 10A of the Act.

To the same effect are the observations of a Division Bench of the Patna High

Court, presided over by Ramaswami, C.J. (as he then was), and Untwalia, J., in *Rohtas Industries Staff Union and Others Vs. State of Bihar and Others*, . However, in that case the Division Bench laid down that a claim for compensation payable by workmen to the employer for loss caused would not be an industrial dispute within the meaning of Section 2(k) of the Act. However, in the present case, by virtue of the definition of an Industrial dispute, the union having taken up an Individual dispute would make it an industrial dispute and, therefore, the union and the employer were competent to enter into an arbitration agreement in respect of the industrial dispute.

Now, the matter stands concluded by the pronouncement of their lordships of the Supreme Court In *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, , wherein their lordships laid down that the decisions of the arbitrators to whom Industrial disputes are voluntarily referred u/s 10A of the Industrial Disputes Act, 1947, would, no doubt, be quasi Judicial decisions and would amount to a determination or order for the purpose of Article 136(1) of the Constitution of India. However, their lordships laid down that an arbitrator acting u/s 10A would not be a tribunal under Article 136, even though some of " the trappings of a Court" would be present in the case. It was because of that their lordships thought that no special leave under Article 136(1) of the Constitution of India could be given to file an appeal against the award of the arbitrator acting u/ s 10A of the Industrial Disputes Act. However, as their lordships laid down that he would be acting as quasi-judicial body, it necessarily implies that the decisions of the arbitrator would be subject to writs of certiorari in appropriate cases. For this reason, we are of opinion that if this Court