
(1956) 01 PAT CK 0024

In the Patna High Court

Case No : Misc. Judl. Case No. 95 of 1955

South Bihar Sugar Mills Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(1), 15, 2, 7(1)

Citation : AIR 1956 Patna 274 : (1956) 2 LLJ 500

Hon'ble Judges : Sinha, J; Rai, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Ramji Saran, for the Appellant; The Govt. Pleader and Ranen Roy and Tara Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—This rule was issued on the opposite parties, the State of Bihar, the Chairman, Industrial Tribunal, Bihar, Manna Lall and Ram Khelawan Lall. General Secretary, South Bihar Sugar Mills Workers' Union, Bihta, to show cause why a direction or order, under Article 226 of the Constitution of India, shall not issue quashing the reference made by opposite party 1, under Notification No. III/D/1-8018/54L-862, dated 18-1-1955, and a writ in the nature of prohibition, under the same Article of the Constitution, shall not issue directing opposite party 2 to forbear from proceeding with, or taking any steps in, Reference No. 2 of 1955, pending before him.

2. The facts, in brief, are that opposite party 3, Manna Lall, was working as Sales Clerk in the Sugar Sales Department of the petitioner, Messrs. South Bihar Sugar Mills Ltd., Bihta. He was suspended with effect from 31-3-1952, on account of his having acted dishonestly and fraudulently in connection with the Mills' business. It is alleged that Manna Lall acted dishonestly in the discharge of his duties. For the purposes of this application, it is not necessary to go into the details of the allegations made by the petitioner against the said opposite party.

Opposite party 3, who will hereafter be referred to as Manna Lall, was charge-sheeted for an offence u/s 408, Penal Code, but he was acquitted on 30-9-1953, as almost all the witnesses for the prosecution had been gained over. The management, however, being satisfied, upon materials in their possession, that Manna Lall was guilty of unauthorised, fraudulent and dishonest acts in connection with the petitioner's business, and that he was further guilty of neglect in the performance of his duties, served upon him a notice to show cause, detailing therein the several charges against him, as to why he should not be properly dealt with, and to submit his explanations, if any.

On receipt of his explanation, which was found unsatisfactory, a further opportunity was given to him, by a letter dated 25-12-1953, to explain the charges against him. His reply to the charges was found vague, and, as, in the opinion of the management, the conduct of Mohan Lall amounted to a major misconduct, within the mischief of Clause L(c) of the Certified Standing Orders, after having taken into consideration the materials available, including his explanation, the manage-merit informed Manna Lall, by a letter dated 27-3-1954, that his services were being dispensed with with effect from 31-3-1952.

Manna Lall, by his letter dated 6-3-1954, addressed to the management, demanded a sum of Rs. 3,559/6/3 as his dues from the Mill; but, according to the management, Manna Lall was entitled to a sum of Rs. 298/8/3 only. He was informed of this, and was asked to take away this amount. Manna Lall, thereupon, by his letter dated 2-4-1954, asked the management to send the money due to him, after deducting money order commission, to his home address. The dues, therefore, amounting to Rs. 298/8/3, after deducting the money order commission, were sent to Manna Lall, and were duly received by him on 21-4-1954.

The management thought that that was the end of the matter, and nothing was heard from him or from anybody else in this connection until sometime in November, 1954, when, at the instance of Manna Lall, the Deputy Commissioner of Labour addressed a letter to the Works Manager of the management, asking certain information in regard to his dismissal, and requesting the Works Manager to see him with all the relevant papers.

Accordingly, the Head Time Keeper of the management, on behalf of the Works Manager, met the peputy Commissioner on 9-11-1954, and showed him all the relevant papers; and at that time Manna Lall himself represented his case, and there was no one, either on behalf of the South Bihar Sugar Mills Workers Union, or on behalf of any other body of workmen, to present Manna LalPs case. The Deputy Commissioner of Labour discussed the matter further with the Works Manager, but during all these discussions as well no one on behalf of the South Bihar Sugar Mills Workers Union was present.

The Works Manager felt unable to recommend any further payment to Manna Lall

even as a compassionate measure. It is submitted on behalf of the management that all these discussions, referred to above, proceeded on the basis that the dismissal of Manna Lall was fully justified and legal, and the only question mooted was the desirability of recommending some payment as a compassionate step.

With this background, the management felt surprised when they received a notice from opposite party 2, the Chairman of the Industrial Tribunal, informing them that the State of Bihar, by the aforesaid notification, dated 18-1-1955, had referred the question of the justifiability or otherwise of the dismissal of Manna Lall to him for adjudication, and directing the petitioner to file written, statement on or before 22-2-1955.

It is stated on affidavit that, at no point of time, whether before or after the dismissal of Manna Lall, the South Bihar Sugar Mills Workers Union, or anyone on their behalf, or any other body of workmen, had taken up the cause of Manna Lall, the dismissed employee. No dispute at the instance of the Union had arisen, or was ever raised by them in regard to the said dismissal, nor was any demand ever made by the said Union, or by anyone representing the Union on behalf of Manna Lall, to the management, or to the Government.

On these facts, it is alleged by the petitioner that there was no industrial dispute within the meaning of Section 2(k), Industrial Disputes Act (14 of 1947), and, therefore, the State of Bihar, namely, opposite party 1, had no jurisdiction to make a reference u/s 10(1) of the Act, and that the proceedings before the Tribunal in Reference No. 2 of 1955 were illegal and without jurisdiction.

3. These allegations of fact, mentioned above, have been taken from the application itself, and none of the opposite parties filed any counter-affidavit. I must assume, therefore, that the facts, as alleged by the petitioner, are true.

4. Mr. Sinha, appearing on behalf of the petitioner, has submitted that this case is concluded by the authority of a Division Bench of this Court in -- New India Assurance Co. Ltd. and Another Vs. The Central Govt. Industrial Tribunal and Others, . In this case, the facts were that the Government of India had made a reference for adjudication of the dispute between the management & one Nagendranath Bhattacharya, who had been dismissed from service by the management, u/s 10(1), Industrial Disputes Act.

On 14-6-1951, the management, had obtained a writ from this Court prohibiting the Industrial Tribunal of Dhanbad from proceeding with the reference. Thereafter, the Government of India had cancelled the reference, and passed another order referring the dispute to the Tribunal. After that, the management, again, instituted proceedings for issue of a writ in the nature of certiorari, under Article 226 of the Constitution, for quashing the reference on the ground that there was no jurisdiction on the part of the Government of India to make the reference. After construction of the several relevant sections of the Industrial Disputes Act (14 of 1947), it was held that

"the "industrial dispute" referred to and defined in Section 2(k) must be construed to mean not a dispute between an individual workman and the management but a dispute which though it may originate in an action with regard to an individual workman, has developed into a dispute in which the majority of the workmen in the establishment are interested if Section 2(k) of the Industrial Disputes Act was to apply there must be a dispute between a body of employees in the collective sense and the management and that a dispute between a solitary employee and the management would not by itself constitute an industrial dispute falling within the scope of Section 2(k), Industrial Disputes Act upon the facts proved in this case it must be held that there was no industrial dispute within the meaning of Section 2(k) of the Act and that the reference made by the Government of India u/s 10(1) is without Jurisdiction."

In the present case, Manna Lall had accepted the dues, as ascertained by the management, without any protest, and there was no dispute, either in the individual sense or in the collective sense. Even if it were to be held that there was a dispute between the management and Manna Lall, it cannot be held that the dispute came within the definition of Section 2(k) of the Act. At no time, the grievance, if any, of Manna Lall was taken up by the Workers Union or by any body of workers with the management.

In that view of the matter, the dispute, if any, remained an individual dispute. The Union of the workmen did not choose fit and proper to espouse the cause of Manna Lall. In my judgment, therefore, as held by the authority of this Court, referred to above, there was no industrial dispute u/s 2(k) of the Act.

5. Learned Government Pleader, who has appeared to show cause on behalf of the State of Bihar and the Chairman Industrial Tribunal, and Mr. Roy, appearing on behalf of Manna Lall, have submitted that, in view of the pronouncement of the Supreme Court in Province of Bombay Vs. Kusaldas S. Advani and Others, , the act of the State Government in referring the dispute u/s 10(1) of the Act is an administrative act; and, therefore, that act of the State Government is not amenable to the writ of certiorari inasmuch as the State Government has acted neither judicially nor quasi-judicially in making the reference. The case of the Supreme Court, however, is distinguishable. In that case, the Bombay Land Requisition Ordinance (5 of 1947) came in for construction. Section 3 of the Ordinance should be quoted. It reads as follows:

"If in the opinion of the Provincial Government it is necessary or expedient to do so the Provincial Government may, by order in writing requisition any land for any public purpose: Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section.""

The majority judgment of the Supreme Court held that, on a proper construction of Section 3 of the Ordinance, the decision of the Bombay Government that the

property was required for a public purpose was not a judicial or quasi-judicial decision, but an administrative act, and the High Court of Bombay, therefore, had no jurisdiction to issue a writ of certiorari in respect of the order of requisition.

It is to be noted that the Ordinance in question did not embody a provision defining "public purpose", and it is doubtful if the Provincial Government requisitioned the land for some purpose which was not covered by the definition of "public purpose", if defined, the action of the State Government was not amenable to a writ of certiorari. I am, however, not called upon in the present case to decide as to whether the action of the State Government, in referring the dispute to the Tribunal, u/s 10(1) of the Act, is merely an administrative act, or a judicial or a quasi-judicial act, because this application can be disposed of without deciding that question.

In the Patna case, referred to above, the question as to the nature of the act of the State Government in making the reference u/s 10(1) of the Act was not raised. It was argued by the Advocate-General in that case that there was a presumption that the facts stated in the notification were correct, and that there was dispute between the Association and the petitioner on the date the notification was issued.

It was held, however, in this case that the presumption was not an absolute presumption, and it was likely to be rebutted by proper evidence, and, upon the facts of that case, it was held that "there was nothing to show that at any time the Association had approached the petitioner for the reinstatement of Mr. Bhattacharya". I would, therefore, refrain from deciding the question as to whether the State Government, in referring the dispute, u/s 10(1) of the Act, was acting in a judicial or quasi-judicial capacity or its action in so referring was merely an administrative act.

6. Section 10(1) of the Act runs as follows: "Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing--

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Tribunal for adjudication."

This section, therefore, is not applicable if there is no industrial dispute existing or apprehended, as defined in Section 2(k), and it has already been held above that, so far as the present case is concerned, there was no industrial dispute in existence, nor was there any such dispute apprehended." Section 15 also appears to be relevant in this connection. It reads thus:

"Where an industrial dispute has been referred to a Tribunal for adjudication, it

shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government."

Section 7(1) of the Act further lays down that --

"The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act."

Reading these sections together, no doubt is left in my mind that the jurisdiction of the Tribunal is founded upon two things: Firstly, the existence or apprehension of an industrial dispute; and, secondly, that the appropriate Government is of such an opinion and has made the reference for adjudication by a Tribunal. This aspect of the matter is not controverted or challenged.

In the present case, even though this Court may not be in a position to quash the reference made by the State Government, by issuing a writ of certiorari, there is no doubt that this Court can issue a writ of prohibition by quashing the proceedings before the Tribunal, which has no jurisdiction to proceed with the reference and adjudicate upon the rights of the parties.

I am definitely of the opinion that this Tribunal, namely, opposite party 2, is not legally vested with jurisdiction, and it must, therefore, be the duty of this Court to prevent that Tribunal from usurping jurisdiction and to keep within its limits, and that the Tribunal must refrain from continuing the proceeding, which is, as held above, without jurisdiction.

In the case of State of Madras Vs. C.P. Sarathy and Another, , the Supreme Court has taken a similar view, and it has been held that, if there had been no industrial dispute within the meaning of the definition given in Section 2(k) of the Act, the award of the Tribunal was liable to be quashed. In the present case, the Tribunal has not yet reached the stage to give award, and, therefore, the proceeding itself can be quashed as being without jurisdiction.

In another Supreme Court case, The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others, , while dealing with the provisions of Section 33A of the 1947 Act as well as Section 23 of the 1950 Act, it was held that

"it is the contravention by the employer of the provisions of Section 33 in the first case and of Section 22 in the second case that gives rise to a cause of action in favour of the workmen to approach and move the respective authority named in the section and this contravention is the condition precedent to the exercise by the authority concerned of the additional jurisdiction and powers conferred on it by the sections. The authority referred to in the section is, as we have seen, a Court of limited jurisdiction and must accordingly be strictly confined to the exercise of the functions and powers actually conferred on it by the Act which constituted it."

This case was referred to by a Division Bench of this Court in Bata Shoe Co. Ltd.

v. All Hasan, Misc. Judl. Case No. 325 of 1955, D/- 8-11-1955 (Pat) (E). This Court held that a particular person alleged as workman was not a workman, and, therefore, the entire proceedings of the Industrial Tribunal taken u/s 33A of the Act of 1947 were without jurisdiction and were quashed.

Applying this principle in the present case, in my opinion, in the absence of existence or apprehension of "industrial dispute", the condition precedent to the exercise of jurisdiction by the Tribunal under the Act, the proceedings pending before the Tribunal are without jurisdiction. In my judgment, therefore, of the two principal reliefs asked for, as mentioned above, the petitioner is entitled to the second relief, and I direct that a writ in the nature of prohibition or direction or order under Article 226 of the Constitution be issued directing opposite party 2 to forbear from proceeding with, or taking any steps in, Reference No. 2 of 1955, pending before him.

7. I do not like to part with this case with out observing that Mr. Roy, who has lately been enrolled as an Advocate of this Court, has argued the matter with ability and fairness.

8. In the result, I would allow the application but there will be no order for costs.

Rai, J.

9. I agree.