
(2019) 10 MP CK 0081
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3070 Of 2017

S.R.F. Ltd.

APPELLANT

Vs

State Of Madhya Pradesh And Anr.

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Trade Union Act, 1926 — Section 2, 4(1), 22, 22(2)
Industrial Disputes Act, 1947 — Section 2(k), 7A, 10, 10(1)(d), 12, 12(3), 18(1),
18(3), 18(3)(d)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 10 MP CK 0081

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Kuldeep Bhargava, Anand Baradwaj, K.N. Gupta, R.S. Dhakad

Final Decision : Disposed Of

Judgement

1. Present petition has been preferred by the petitioner under Article 226/227 of the Constitution of India seeking quashment of order dated 17-02-2017 (Annexure P/1) whereby Deputy Labour Commissioner (Office of Labour Commissioner), Government of Madhya Pradesh has referred the matter for adjudication to industrial Court, Madhya Pradesh under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947").

2. It is alleged that respondent No. 2 has approached the Conciliation Officer for demanding claims showing themselves to be representing the employees of the petitioner's factory. It is alleged that respondent No. 2 is having on locus standi or competency to file the aforesaid proceedings as it is neither registered as a Trade Union in the State of Madhya Pradesh nor represents the employees of the petitioner. The employee of the petitioner are represented by a Union namely SRF Karamchari Evam Shramik Sangh who has been entering into long term wage settlement with the petitioner since in the year 2007. The Registrar of Trade Union vide its communication dated 16th June, 2016 has rejected the

request of the respondent No. 2 to register as Trade Union. Despite there being order/award wherein the respondent No. 2 was held as incompetent, with no locus standi to represent employees in Madhya Pradesh thus before the respondent No. 1, therefore, reference has been made on the demand raised by them to the learned Industrial Court for adjudication.

3. Counsel for the petitioner has alleged that the petitioner/Company incorporated under the Companies Act, 1956, has its registered Office at New Delhi and has a factory located at Industrial Area, Malanpur, District Bhind. In the factory at Malanpur Nylon tyre cord and fabric is manufactured. The petitioner is aggrieved by the impugned order dated 17.02.2017, whereby, reference has been made for adjudication to the learned Industrial Court. It is further alleged that the respondent No. 2 is a Union registered by the Registrar Trade Union at Mumbai with limited area of its operation i.e. in Mumbai in respect of the specified industries only. He has drawn attention of this Court to registration certificate (Annexure P/3) as well as bye-laws along with list of industries annexed to the bye-laws of the Union. It is further submitted that respondent No. 2/Union does not qualify the requirements of Section 22 of the Trade Union Act, 1926. The respondent No. 2 had approached the respondent No. 1/State in the capacity of Registrar Trade Union, State of Madhya Pradesh of its registration as Trade Union which has been rejected vide order dated 16.06.2016. Learned Industrial Court of Madhya Pradesh in the matter of J.K. Tyres has held that respondent No. 2 is neither registered in the State of Madhya Pradesh nor having any locus standi to represent employees of management employed in the State of Madhya Pradesh. It is further submitted that respondent No. 2 i.e. Association of Chemical Workers claimed to represent the employees of its factory at Malanpur and has selected a local committee members. The respondent No. 2 Association of Chemical Workers which is a union registered in Mumbai, but does not have any registration in the State of Madhya Pradesh. It is further alleged that SRF Karamchari Evam Shramik Sangh has been dissolved and thus it has become representative body of the employees in the factory of the petitioner. It is further alleged that SRF Karamchari Evam Shramik Sangh is a Trade Union and is still in existence and has recently entered into a settlement dated 24.10.2016 in respect of the payment of bonus that has been received and acknowledged by all the workers employed in the Factory. The President of the SRF Karamchari Evam Shramik Sangh has posted and circulated a notice denying the allegation/claims of the respondent No. 2 about merger alleging the said claim to be illegal. It is further submitted that during the pendency of conciliation proceedings, the petitioner submitted detailed representation dated 15.11.2016 with all the relevant contentions. It is further submitted that reference is non-est inasmuch as the respondent No. 2 has been held to be incompetent having no locus standi to represent employees of the petitioner's factory at Malanpur. It was further alleged that without there being any challenged to the previous disqualification of respondent No. 2 by the Industrial Court, no fresh reference is maintainable before the Industrial Court.

Counsel for the petitioner has drawn attention of this Court to several documents filed along with the writ petition to establish the claim. It is further submitted that the nature of work of petitioner's factory is totally different and bye-laws of the respondent No. 2-Association does not show that such kind of work is being done by them and therefore, respondent No. 2 is not entitled to look into the working and service conditions of the employees of the petitioner's factory. It is further alleged that there is no registration of respondent No. 2 in the State of M.P. They are registered at Mumbai that too for a limited industries. He has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and others reported in (2000) 1 SCC 371, wherein, para 24 and 27 are relevant:-

"24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when mere is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act, Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter, A settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. Recognized

union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings is binding on the members of the workers' union as laid down by section 18(3) (d) of the Act . It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of Unions that are signatories to such settlement under section 12(3) of the Act Act is based on the principle of collective bargaining for resolving Industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of P. Virudhanchalam & Ors. v. Management of Lotus Mills & Anr., [1998] 1 SCC650. In all these negotiations based on collective bargaining individual workman necessarily records to the background Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

27. The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, the Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers' Union that tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings."

4. Learned counsel for the petitioner has argued that the industrial Court is creation of statute and gets its jurisdiction on the basis of the reference. It cannot go into the question of validity of the reference before the High Court as one of the jurisdiction which it fails to consider.

5. He has further drawn attention of this Court to Section 2 of the Trade Union Act and Section 4(1) and proviso appended to it and Further Section 22(2) of the Act in support of the arguments. He has further drawn attention of this Court to Schedule-A deals with the list of industries from which the workers are allowed to become the member of industries of chemical workers and once the industries being Petroleum and chemical products. The respondent No.2 is trying to establish that they are covered under the category of item No. 38, synthetic detergents and MLC dying agents and item No. 46 cloth dying and printing. He has further argued that from perusal of annexures R/1 and R/2 the number of employees are different. He has further drawn attention of this Court to order

passed by the coordinate bench of this Court on earlier occasion when the present writ petition was finally heard and decided vide its order dated 26.10.2017. He has further argued that the end product specified items are required to be seen. He has further drawn attention of this court to Section 2(K) of ID Act and the Schedule-3 which does not cover the case of the respondent. He has relied upon the Section 10 and 7-A of the ID Act to substantiate his arguments. It is further alleged that the Hon'ble writ court from para 20 onwards has considered entire arguments and arrived at conclusion that it cannot be assumed that the local committee has been formed, even otherwise mere permission of local committee could not give the respondent No. 2/Union, the characteristic of representative union in terms of the clause 30 of the Act. 1960. He has further alleged that in terms of Clause 30(P/18) the procedure has not been followed yet, therefore, it cannot be concluded that the SRF Sangh has been dissolved or amalgamated into the respondent No. 2/Union. Accordingly, he has prayed for allowing the writ petition and quashing the impugned order whereby, reference is directed to be made.

6. Per contra, learned senior advocate has out rightly argued that the order passed on earlier occasion by the writ Court dated 26.10.2017 was put to challenge by filing a writ appeal by the Association of Chemical being W.A. No. 1168/2017 and the writ appeal was finally heard and allowed vide its order dated 05.02.2018 and order impugned was set aside by the Division Bench of this Court and the matter was relegated to the Single Bench of this Court for fresh decision taking into consideration the provisions as contained in the I.D. Act, 1947. Thus, the arguments advanced by the learned counsel for the petitioner on the basis of judgment and of no help to the petitioner. The aforesaid order/judgment has already been set aside by the Division Bench of this Court. He has drawn attention of this Court to Clause 10 of I.D. Act and (Annexure P/1) which relates to the demand being made by the employees of the respondent No. 2 which reads as under:-

"???? ????? ???????, ?????????? ??? ?????? ???????, ??? ??? ??? ????? ????? ??????
???? ????? ? ?????????? ????? ????? ??? ??? ????? ??? ??? ?? ?????? ????? ??? ??????
?? ?????? ??? ??? ?? ?????? ??? ??????? ????? ?? ????? ?????/????????? ????? ????? ??????"
,

7. He has further drawn attention of this Court to para 3 of demand application to substantiate his arguments that the demands are being made by the Chemical workers-Association. He has drawn attention of this Court to Clause 10(4) of Industrial Dispute Act which reads as under:-

"10. Reference of disputes to Boards, Courts or Tribunals.-

* * * * *

(4) Where in an order referring an industrial dispute to [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, [the Labour

Court or the Tribunal or the National Tribunal, as the case may be] shall confine its adjudication to those points and matters incidental thereto."

8. Thus, he has argued that in terms of Section 10 of I.D. Act the reference is rightly being made taking into consideration the demands being raised by the workers of the Chemical Association. Section 10(1) Clause (d) reads as under "refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or Third Schedule, to a tribunal for adjudication." He has drawn attention of this Court to Schedule appended.

9. Counsel for the respondent No. 2 has relied upon the judgment passed by the Court in the case of Birla Corporation Ltd., Vs. Dy. Labour Commissioner and another reported in 2016 (3) MPLJ 117 and has argued that in the similar facts and circumstances of the case the Division Bench of this Court taking into consideration Section 10(1) D of Schedule 3 of Industrial Dispute Act has disposed off the W.A. with following directions:-

"Accordingly, we dispose of not only this appeal, but also the writ petition in the following manner:-

(i) On the petitioner/appellant's appearing before the Labour Court and raising a preliminary objection with regard to maintainability of the reference of the reference before the Labour Court, the Labour Court shall consider the preliminary objection and decide it as a preliminary issue before proceeding to determine the question referred to it on merits, in accordance with law.

(ii) The question of maintainability of the reference shall be decided as a preliminary issue by the Labour Court within a period of three months from the date of receipt of the certified copy of this order after hearing all concerned, and thereafter if the Labour Court comes to the conclusion that the dispute is maintainable, the Labour Court shall proceed in the matter in accordance with law. "

10. Counsel for the respondent no. 2 has heavily relied upon the judgment and argued that in similar terms the matter may be disposed off in the light of order passed by the Division Bench of this Court.

11. Heard learned counsel for the parties and perused the record.

12. From the record, it is seen that the respondent No. 2 has made the application to the labour Officer for settlement of his demands and in the conciliation proceedings when there was no settlement, the reference was made to the learned Labour Court for adjudication the demands raised by the respondents No. 2. The Division Bench of this Court in the case of Birla Corporation Ltd., (Supra) has referred the matter to the reference Court with a specific direction to check the locus of the association as a preliminary issue prior to decide the reference. It was further observed that whether the demands which are being raised are genuine or not is to be considered by the Reference Court.

Thus, it was left open for the reference Court to adjudicate upon the aforesaid. In the present case similar is the situation. From perusal of the demands note it is seen that several demands have been raised by the respondent No. 2/Association with the Labour officer. From the demands which are being raised it is seen that 419 employees are regularly working and the management of the company is not taking care of the rights of the employees therefore, they have raised demands which are being mentioned from the clause 3.1 to 3.11 of the demand note. It is not the case where there is no demand being raised rather specific demands are being raised pointing out the difference with the other employees and new projects. As far as the locus of respondent No. 2 is concerned to raise the demand it is to be looked into by the reference Court whether he is entitled for reference or not. Thus, the Division Bench's judgment is applicable in the facts and circumstances of the case and the present petition is deserves to be disposed off in identical terms of the directions issued by this Court in the matter of Birla Corporation Ltd., (Supra).

13. Accordingly, the present writ petition is disposed off in terms of the order passed in the case of Birla Corporation Ltd., (Supra). The learned Labour Court is directed to decide the reference within a period of six months.

14. Hence, the present petition is disposed off with the aforesaid observation. No order as to costs.