
(1976) 07 AP CK 0007
In the Andhra Pradesh High Court

Srikrishna Jute Mills

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Trade Unions Act, 1926 — Section 10

Citation : (1977) 2 LLJ 363

Hon'ble Judges : B.J. Divan, C.J.;Punnaya, J

Bench : Division Bench

Judgement

B.J. Divan, C.J.—This writ appeal against the judgment of Sriramulu, J. sitting singly in Writ Petition No. 5490 of 1972, arises under the following circumstances. The petitioner, "Sri Krishna Jute Mills", is a jute factory which was set up at Eluru for the manufacture of jute gunnies and twine. For this purpose, it engaged a large number of workmen. Two unions of workmen of the petitioner jute Mill have been formed; one is Jute Labour Union, which is registered under the Trade Union Act and the other is Jateeya Jute Karmika Sangam, which represents certain categories of workmen. On September 16, 1968, in connection with certain matters arising out of the working of the petitioner-factory, rioting took place, which resulted in the murder of one of the workers of the petitioner-factory. Respondents 4 to 10 herein were prosecuted for the murder of the said workman. They were convicted by the Sessions Judge, Eluru, in Sessions Case No. 37 of 1968 and sentenced to various terms of imprisonment. Appeals against those sentences were dismissed. On completion of their jail sentences respondent 4 to 10 were released from jail. The petitioner-factory framed charges against respondents 4 to 10 on the basis of their convictions for the death of a co-worker. After conducting an enquiry, the petitioner-factory dismissed respondents 4 to 10 from service.

2. Respondents 4 to 10 approached the Conciliation Officer in the matter of the dismissal from service. As there was a failure of conciliation, the Conciliation Officer sent a report of failure of conciliation proceedings to the Government. By

their letter dated October 7, (sic). The Government held that the discharge of respondents 4 to 10 was effected after holding a domestic enquiry and after giving full opportunity to the dismissed workmen and that it did not amount to double punishment, one by the Criminal Court and the other by the petitioner-factory in respect of the same matter. The Government, accordingly, held that it was not a fit case to make a reference to the Labour Court.

3. Nearly two years later, i.e. on September 12, 1972, one A. Sreeramulu, a member of the Legislative Assembly, addressed a letter to the State Government and, there after, the State Government issued an order, G.O. Ms. 1380 Home (Labour-1) Department dated September 30, 1972 referring the dispute In regard to the dismissal of respondents 4 to 10 from service to the Labour Court. The dispute referred to the Labour Court, Guntur for adjudication was whether the discharge of the workmen (respondents 4 to 10) from service by the management was justified and, if not, to what relief the workmen were entitled. After the order of reference was issued, the petitioner-factory challenged the order of the Government making the reference to the Labour Court, by filing Writ Petition No. 5490 of 1972. That writ petition was heard by Sriramulu, J., sitting single and by his order dated January 16, 1975 Sriramulu, J., held that the reference was proper and that there did exist an industrial dispute between the workmen and the management. He, there fore, dismissed the writ petition with costs. The learned single Judge directed the Labour Court to adjudicate upon the reference after giving opportunity to both the workmen and the management and within a reasonable time. Against that decision of Sriramulu, J., the present writ appeal has been filed.

4. Mr. Srinivasa Murthy, the learned Counsel for the appellant (petitioner-factory) has drawn our attention to the letter dated October 7, 1970, of the Government addressed to the General Secretary, Jute Labour Union, Eluru, by which the Government in the first instance, declined to refer the dispute regarding the dismissal of respondents 4 to 10 from service of the petitioner-factory. The letter is in these terms:

I am directed to state that the management of East India Commercial (Private) Limited, Lessees, Sri Krishna Jute Mills Ltd., Eluru has discharged Sri Pathivalasa Sitharamayya and six other workers after giving all opportunities to defend themselves and that the discharge does not also constitute a double punishment. Therefore, the Government do not consider it necessary to refer the matter for adjudication.

In the order issued by the Government, i.e., G.O. Ms. No. 1380, Home (Labour-I) Department, dated September 30, 1972 at the commencement, it has been mentioned:

Read the following:

1. xx xx xx 2. xx xx xx 3. From Sri A. Sreeramulu, M.L.A. letter dated 12.9.72.

After reading the earlier documents of 1970. this is the only document of 1972, which has been referred to, viz., the letter of Sri A. Sreeramulu, M.L.A. dated September, 12, 1972.

5. The principles as to when a previous decision not to refer a particular dispute to adjudication can be reconsidered by the Government are now well-settled by several decisions.

6. In *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, Shelat, J., delivering the judgment of the Supreme Court, observed in para graph 9 at page 1209 of the report.

In *State of Madras Vs. C.P. Sarathy and Another*, this Court held on construction of Section 10(1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible. In the light of that nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute.

xx xx xx The reason given in these decisions is that the function of the Government either u/s 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as *res judicata* applicable to judicial Acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference it does not exercise its power on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and acts up. on such belief, does not affect the jurisdiction of the Government to make the reference.

7. In *Binny Ltd. Vs. Their Workmen*, G.K. Mitter J., delivering the judgment of the Supreme Court, observed in para. 12 at p. 484 (of Lab. LJ) : (Para 12 at p. 1146 of Lab IC) of the report:

The submission that the order of reference is invalid as the Government had no grounds or material to form the opinion about the existence of a dispute in order to enable it to make an order u/s 10(1) is one which does not merit any consideration. In the absence of the Government from the array of the parties it is not possible to come to any finding as to whether there were any such material or not. But the mere fact that on two previous occasions. Government had taken the view that no reference was called for, does not entitle us to conclude that there could be no cause for reference in 1966. The enquiry was held on 10th November 1963, and the order of termination of service was made the very same day. The letter of the Under Secretary to Government Labour Department, dated August 17, 1964 shows that out of the five workmen in question Government considered the case of dismissal of three as quite old as having taken place at different times in 1961, 1962 and 1963 and as such did not deserve consideration. With regard to the other two, namely, Ramanatha and Kuppuswamy, Government was of the view that they had been employed in the year 1963 itself and had put in very short periods of service and as they had been dismissed after proper enquiry no reference was called for. The second letter is dated August 21, 1965 where the Under Secretary merely stated that in view of the decision already taken, the dispute in question did not merit reference for adjudication. From the above it does not follow that Government could not thereafter either change its mind or make an order of reference on fresh material before it. u/s 10(1) of the Industrial Disputes Act a reference may be made at any time whenever the appropriate Government is of opinion that any industrial dispute exists or is apprehended. At any rate the point could only be canvassed either in a proceeding to which the Government was a party or in one where the Court was in possession of all the available material relating to the dispute, in the absence of such material the point must be decided against the appellant.

8. Mr. Srinivasa Murthy has also relied upon the decision of Ramaprasada Rao, J. of the Madras High Court sitting singly in *K. Abdul Salam and Co. v. State of Tamil Nadu* (1973) 43 F.J.R. 180. There, the learned single Judge held, on the facts of that case that the Government having refused to refer an alleged industrial dispute for adjudication, if it subsequently re-exercises its power and re-refers the dispute for adjudication solely on the further representation made by public men and representatives of the workmen, without giving the employer an opportunity to rebut giving the employer an opportunity to rebut the content and scope of such representations, the subsequent order would violate the well-known rule of fair hearing and would be unjust. The learned Judge also held that, if the Government suo motu changed their mind without anyone prompting them to do so and wanted to exercise their inherent power on the same material which was considered by them in the first instance, the position would be different.

9. In *Kirloskar Electric Co. Ltd. v. Their Workmen* 45 F.J.R. 158 : 1975 Lab IC 124 , Venkataramaiah, J. sitting singly, dissented from the view taken by the Madras High Court in *K. Abdul Salam and Co. v. State of Tamil Nadu* (1973) 43 F.J.R. 180 and held:

Even when an action taken by the Government is administrative in character if such action is likely to lead to certain civil consequences which are prejudicial to any person there is an implied obligation on the part of the authority taking such action to give an opportunity to the person who is likely to be affected to show cause why the proposed action should not be taken. If there is no likelihood of any such prejudice or civil consequences, there may be no necessity to give any opportunity to the party concerned unless required by statute. Any decision taken by the appropriate Government u/s 10 of the Act does not lead to any finality in so far as the dispute between the parties is concerned as the dispute is normally to be decided by an impartial Court or Tribunal presided over by Judges with judicial experience it cannot be said in such a situation that the employer would suffer any kind of prejudice if the Government proceeds to make a reference under the section without hearing the parties although it has on an earlier occasion declined to make the reference.

A similar view was taken by Kuppuswami, J. of this Court sitting singly, in Writ Petition No. 2370 of 1973 decided by him on February 20, 1975 (Andh Pra). One of the contentions urged before Kuppuswami, J. in that writ petition was that the petitioner-company should have been given notice show cause why the previous order refusing to refer should not be reviewed and the case should not be referred for adjudication. Kuppuswami, J. observed:

This submission proceeds upon a misconception about the nature of the previous order that was passed. As has been pointed out by the Supreme Court the order refusing to refer amounts only to con-exercise of the power to refer. No rights are created in any person by reason of that order and if the Government chooses to reconsider that order, there is no necessity to give notice to any of the parties. The position is the same as it would be if the Government is considering the question in the first instance. There is no provision in the Act for giving notice to the parties if the Government decides to refer the matter.

In the light of these two decisions, one of the Karnataka High Court and the other of our High Court, with which we agree, with respect to the learned single Judge of the Madras High Court, we are unable to accept his view that, if the Government chooses to reconsider its earlier decision not to refer a particular dispute to adjudication, it must give notice to the employer of its proposed action. As Kuppuswami, J. pointed out in W.P. No. 2370 of 1973 (Andh Pra) and Venkataramaiah J. pointed out in *Kirloskar Electric Co. Ltd. v. Their Workmen* 1975 Lab IC 124 (Kant), there is no necessity to give notice in such an eventuality because no civil rights of any parties are being adjudicated upon and hence the principle laid down by the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, is not attracted in this case.

10. In the light of the observations of the Supreme Court in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, , which have been extracted above, it is clear that, if new facts have come to light or because the Government has misunderstood the existing facts or on any other relevant consideration, it is open to the Government to refer the industrial dispute for adjudication, if it comes to the conclusion that an industrial dispute exists, so that the industrial relations between the employers and their employees may not continue to remain disturbed.

11. Mr. Srinivasa Murthy, the learned Counsel for the appellant (petitioner-factory), has contended that, as pointed out by the Government in its order, it relied upon the letter of Sri A. Sreeramulu M.L.A. when it decided to reconsider its earlier decision not to refer the dispute to adjudication. He contended that the learned single Judge of this Court in his judgment in the instant case proceeded upon the footing that later on, the workers made further applications to the Government and that those applications were forwarded through the local M.L.A. Mr. A. Sreeramulu that on the basis of that letter, the Government once again went into the matter and considered the facts and it can not, therefore, be said that there was no material before that Government for changing its opinion, or that there was no industrial dispute between respondents 4 to 10 and the appellant. He contended that there was no material before the learned single Judge for coming to the conclusion that the letter of the local M.L.A. was forwarding letter by which the representations of respondents 4 to 10 were forwarded to the Government by the M.L.A. In order to satisfy ourselves as to what exactly the letter of Sri A. Sreeramulu, M.L.A. contained we adjourned the matter, so that the relevant Government records could be produced before us.

We went through the records and satisfied ourselves that, in the letter written by Sri A. Sreeramulu, M.L.A. to the State Govt., apart from pointing out what the case of respondents 4 to 10 was, in the last paragraph, he had stated that he was forwarding to the Government the individual representations of respondents 4 to 10 for its considerations. In view of this particular state of affairs, it cannot be said that the Government had no fresh material before it and that it merely acted on the letter of the local M.L.A. The observation of Sri Sreeramulu, J. in his judgment are, therefore, justified by the materials on record of the Government. It may be pointed out that, in the counter-affidavit of respondents 4 to 10, it was stated in paragraph 7:

The respondents submitted applications and they were forwarded by Sri Sreeramulu, M.L.A. and the Government reconsidered all the facts and referred the matter.

It is true that, at the stage of the hearing of the writ petition before the learned single Judge, the Government had not filed any counter-affidavit regarding the letter of the M.L.A. But it must also be observed that no fresh affidavit was filed by the petitioner-factory after the counter-affidavit of respondents 4 to 10, particularly in the view of what has been stated in paragraph 1 of the counter-affidavit. It is true, as Mr. Srinivasa Murthy, pointed out, that only the

Government was in possession of all the facts and, therefore, it was for the Government to state as to what had been the material before it by filing an appropriate counter-affidavit. But, as we have stated above, the Government records do show that the M.L.A. had forwarded along with his letter the applications or representations of respondents 4 to 10 and, therefore, there was fresh material before the State Government on the basis of which it could make the order of reference in 1972.

Under these circumstances in view of the principles laid down by the Supreme Court in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, and also in view of what we have observed above, viz., that there was no necessity to give a show cause notice to the employer in the instant case why the Government should not reconsider its earlier decision not to refer the dispute for adjudication, the contention of Mr. K. Srinivasa Murthy must be rejected. The Government had the power to reconsider its earlier decision by which it had decided not to refer the dispute between the petitioner-factory and respondents 4 to 10 for industrial adjudication. When it reconsidered the decision, it had fresh materials before it and it had acted in view of those materials and not merely on the letter of Sri A. Sreeramulu, M.L.A. Under the circumstances, the view taken by A. Sreeramulu, J. to dismiss the writ petition was correct. We have arrived at our conclusions by a process of reasoning slightly different from the reasoning which appealed to the learned single Judge, but our conclusion is the same.

12. The writ appeal, therefore, fails and is accordingly dismissed with costs. Advocate's fee Rs. 100. We wish to make it clear that we are not dealing with the merits of the case before us.