
(2000) 02 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 1575 of 1999

Statesman Limited

APPELLANT

Vs

First Industrial Tribunal

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 18(1), 19(2)
Industrial Disputes Rules, 1958 — Rule 68

Citation : (2000) 1 ILR (Cal) 438

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Pranab Kumar Roy, for the Appellant; Bikash Ranjan Bhattacharya, for Private Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Basudeva Panigrahi, J.—This case assails the order dated June 25, 1999, passed by the first Industrial Tribunal rejecting the prayer of the writ Petitioner for hearing the reference on the question of jurisdiction and also the point of maintainability about the competency of the State Government for making such reference. Shorn of unnecessary details, the Petitioner's case in short is; the Petitioner No. 1 has been registered as a company under the provisions of the Companies Act, 1956 and is engaged in the business of publication of newspapers and journals of "The Statesman" which is a leading daily newspaper in India. The Petitioner No. 2 is a shareholder as such he carries on business through the agency and/or instrumentality of the company. It is stated that by reason of illegal and wrongful acts of the workmen's complained of hereinafter. The rights of the Petitioner No. 2 to carry on such business has been and/or is seriously prejudiced and the business of Petitioner No. 1 may also seriously be affected.

2. The company entered into a settlement with its workmen on September 22,

1993 u/s 18(1) of the Industrial Disputes Act, 1947, (Hereinafter referred to as the said Act) read with Rule 68 of the Industrial Disputes Rules, 1958. In the settlement, it has been laid down the manner and method of payment of bonus to the employees of the company for some years. In the said settlement, the Clause (I) has been quoted as follows:

Clause (I)

That for the accounting year 1992-93, the Company shall pay to each eligible employee (by the expression "eligible employee" meant such employees who come within the purview of the Payment of Bonus Act, 1965, during the relevant accounting year Bonus at the rate of 15.5% of the salary/wage earned during the relevant accounting year. For the accounting year 1993-94, the rate shall be 16% of the salary/wage earned by the employee during the relevant accounting year. For the accounting year 1994-95, the rate shall be 16.5% of the salary/wage earned by the employee during the relevant accounting year. For the accounting year 1995-96, the rate shall be 17% of the salary/wage earned by the employee during the relevant accounting year. All other conditions will remain same for the accounting years 1993-94, 1994-95 and 1995-96.

3. In Clause (X) of the settlement it was agreed among the Petitioner No. 1 and its employees which is as follows:

That the employees who otherwise answer the description of "workmen" as laid down in The Industrial Disputes Act, 1947, but do not answer the description of "employee" as laid down in The Payment of Bonus Act, 1965, being in enjoyment of salary/wage exceeding Rs. 2,500/- per month, shall also be paid Bonus on the above basis, but in their case it will be a lump sum payment of Rs. 3,100/- for the accounting year 1992-93, Rs. 3,250/- for the accounting year 1993-94, Rs. 3,400/- for the accounting year 1994-95 and 3,575/- for the accounting year 1995-96 instead of the rates of 15.5%, 16%, 16.5%. and 17% respectively and subject to the further condition that if any such employee is not present on all working days during the respective accounting years, the quantum of Bonus shall be reduced proportionately in this case.

4. But subsequently, when there was a dispute between the employer company and its workmen there was a conciliation proceeding for adjudication but after it being failed the State Government has referred the matter again to the Industrial Disputes for adjudication u/s 10 of the said Act which has been quoted as follows:

Whether the employees covered under Clause (X) of settlement dated 22.9.93 will be entitled to proportionately higher amount of bonus than that of the employees covered under Clause (I) of the said settlement of prevailing practice even after recent amendment of the Payment of Bonus Act, 1965 by ordinance in 1995.

5. The Petitioner company has filed an application challenging the maintainability and also the jurisdiction of the present reference. The present reference relates

to the enforcement of the Clause 10 of the settlement which entitled the employees to proportionately higher amount of bonus than that of the employees covered under Clause (1) of the said settlement after the Payment of Bonus Amendment Act, 1995, came into force. The main ground of objection raised by the company is that when there is a doubt as regards the interpretation of Clause (X) of the settlement, necessary procedure that should have been adopted is to make a reference u/s 36(A) of the Act but the State Government could not have in such situation referred a dispute u/s 10 of the said Act, therefore, the reference infact bad in law and it confers no jurisdiction upon the Tribunal.

6. While disposing of the objection, the learned Tribunal on a careful analysis of the various provisions of the said Act was inclined to reject the application and directed the matter to be answered u/s 10 of the said Act. Therefore, being aggrieved by and affected with the said observations of the Tribunal, the Company has filed this writ.

7. Mr. P.K. Roy, the learned Senior Advocate appearing for the company has very strongly urged that since the reference by the Government u/s 10 of the Act was on the basis of total non-application of mind, therefore, such reference is ex facie erroneous and perverse. The Tribunal, in such situation, should have adverted itself to the preliminary question of jurisdiction. But it too rejected the petition filed by the writ Petitioners only on a technical ground that since there was a economic dispute between the employer and the workmen, therefore, such dispute could not have been answered under a reference made in Section 36(A) of the said Act. Section 36(A) provides power to the Tribunal regarding the interpretation of the provisions of the settlement in case of any such dispute raised by either party. But by invoking jurisdiction u/s 10 of the Act, the Tribunal cannot pass an award directing the employer to make, payment.

8. It has been further argued that the point raised by the workmen cannot be brought within the ambit and scope of an "Industrial Dispute" as in Section 2K of the Act and the Tribunal has wrongly invoked Section 10 of the Act.

9. Mr. Bikas Ranjan Bhattachariya, the learned Advocate appearing for the Respondent workmen has, however, while repelling the contention of the Petitioners has submitted that in this peculiar situation, the State Government was perfectly justified in making a reference u/s 10 of the Act on account of failure of conciliation between the parties. There was no dispute with regard to Clauses of the settlement arrived at between the parties, therefore, a dispute with regard to payment of bonus under the amending provision to which the employer did not agree, as a reason whereof the State Government was bound to make such reference u/s 10 of the Act. It is not a jurisdictional issue and such matter being within the administrative functions assigned to the State, it is not justiciable.

10. While examining the contention raised between the parties I must first advert to the necessary provisions of this Act. Firstly it has been examined whether the

matter in controversy is an Industrial Dispute u/s 2K of the said Act. If it is answered affirmative, then, the contention of the Petitioners that the reference ought to have been made u/s 36(A) of the said Act is bound to be spurned. The scope and amplitude of expression "Industrial Dispute" has been interpreted in many decisions such as in Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, . The expression is very wide and Court on a liberal interpretation includes a dispute relating to any person considering the scheme and the objects of the Act and such dispute shall include regarding employment, non-employment, terms of employment and condition of labour.

11. The power of the State Government has been conferred u/s 4K of the said Act. It is true that the legislature had left the question of making or refusing to make a reference for adjudication to the discretion of the Government but the discretion is neither unfettered nor arbitrary. Reliance has been placed by the Petitioner in Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, . But on a close and carefully reading of the decisions I did not understand how the above decision supports the case of the Petitioner. It has been held in the above decision which as follows:

In the present case though nearly four years had gone by since the earlier decision not to make the reference, if the Government was satisfied that its earlier decision had been arrived at on a misapprehension of facts, and, therefore, required its reconsideration, neither its decision to do so nor its determination to make the reference can be challenged on the ground of want of power. The fact that the dispute between the concerned workman and the management had become an industrial dispute by its having been espoused by the union since 1957 cannot be disputed.

12. In the abovementioned case the matter was not referred u/s 10 of the Act. The State Government had referred the matter u/s 4K when it noticed that there still exists a dispute u/s 2K of the Act as in the instant case unfettered power provided to the State for making such reference to the Tribunal.

13. Mr. Roy, the learned Advocate appearing for the Petitioner has strongly placed reliance in another case of Puna Majdur Shabha v. Dhutia and Anr. 1956 L.L.J. 319. But on a careful study of the decision it is found that there is no specific provision in the Act which lays down that an industrial dispute cannot be raised with regard to a matter which is subject of a settlement u/s 12 read with Section 19(2) of the Act. In course of conciliation proceeding the terms of settlement shall bind the parties and also between the period for which both parties shall agree to be operative. In this case such question is outside the pale of consideration inasmuch as the workers have claimed bonus on an enhanced rate under the amended provisions of the Bonus Act, therefore, such disputes centers round regarding their legitimate claim which was denied by the employer.

14. Mr. Bhattachariya has relied upon a judgment in the case of Sadharam v. Delhi Transport Corporation 1985 (4) S.C.C. 156. In the aforementioned case the

Hon"ble Supreme Court has delineated the power and jurisdiction which can be exercised in a case under Article 226 of the Constitution. The writ jurisdiction although confers wider power but such power has to be exercised with great circumspection. The writ Court cannot assume power of an appellate Court to all out the disputed question of facts, when a question of exercise of jurisdiction has been raised by one of the parties, such jurisdictional issue should be left to be decided by the Tribunal itself. The Tribunal gets jurisdiction only after a reference is made and it is, therefore, impossible even to say that the Tribunal clutched the jurisdiction without any reference.

15. While considering a dispute under the Act the Tribunal should look to the situation pragmatically but not by taking a pedantic approach. In an industrial dispute always there should be a fight between the employer and the workman cannot be a match with the employer. Therefore, it should be borne in mind that any attempt to delay or procrastinate a dispute should as quickly as possible be averted. The preliminary issue as well as the main issue can be taken up together and there is no need to make peacemeal hearing as regards the question raised by either party.

16. In a decision National Council for National Council for Cement and Building Materials Vs. State of Haryana and Others, where it is held that:

The facts in the instant case indicate that the Appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted and "Industry" within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think right it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the Appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decided to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is full in consonance with the law laid down by this Court in its various decision referred to above and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs.

17. The case referred by The Workmen of Workmen Employed by Hindustan Lever Limited v. Hindustan Lever Limited 1984 S.C.C. 392 is aptly applicable to this case where it is held that:

It is most unfortunate that all those unhealthy and injudicious practices resorted to for unduly delaying the culmination of civil proceedings have stealthily crept

in, for reasons not unknown, in the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with the avowed object of keeping them free from the dilatory practices of civil courts". Times without number this Court, to quote only two D.P. Maheshwari v. Delhi Administration and S.K. Verma v. Mahesh Chandra disapproved the practice of raising frivolous preliminary objection at the instance of the employer to delay and defeat by exhausting the workmen the outcome of the dispute yet we have to deal with the same situation in this appeal by special leave.

Section 10(1) confers power on the appropriate Government to refer an existing or apprehended industrial dispute, amongst others, to the Industrial Tribunal for adjudication. The dispute, therefore, which can be referred for adjudication of necessity, has to be an industrial dispute which would clothe the appropriate Government with power to make the reference, and the Industrial Tribunal to adjudicate it.

18. In a Division Bench case of Andrew Yule & Company Limited and its Group (Calcutta Region) Clerical Staff Union v. Andrew Yule & Company Limited and Ors. 1995 (1) C.H.N. 245 where it has been held as follows:

Before March, 1990 there was only one Union in the Respondent company. The said Union had entered into a Tripartite Settlement on 18th September, 1989 concerning the revision of basic pay, Dearness allowance, House Rent allowance and City Compensatory Allowance. The said settlement was to take effect retrospectively from 1st September, 1989 and was to subsist till 31st December, 1990. Some time in March, 1990 some of the members of the said employees Union resigned from that Union and formed the Appellant Union. The Appellant union filed a charter of demand on 19th November, 1990 with regard to basic pay, dearness allowance and house rent allowance etc. There was a conciliation proceeding on the ground that the points of dispute raised by the Appellant Union was the subject matter of the tripartite settlement which was to expire on 31st December, 1990.

When the tripartite settlement was coming to an end both the original Union and the Appellant union raised separate demands with the company with regard to wage structure, house rent allowance etc. A conciliation proceeding was held between the Appellant union and the company. While the conciliation was going on 22nd April, 1991, the Company entered into a bi-partite settlement with the other union. On 26th April, 1991 the Company issued notices to all its employees offering to pay in accordance with the said bi-partite settlement including the members of the Appellant union on condition that the said employees would individually convey their acceptance of the terms and conditions of the said bi-partite settlement. The company by a letter dated 26th June, 1991 intimated the Conciliation Officer that unless and until the terms and conditions of bi-partite settlement were accepted individually no payment can be made to the members of the Appellant Union. The conciliation proceeding ultimately ended in a failure and the failure report was sent to the Government by the conciliation officer.

Thereafter the employees belonging to the Appellant union accepted the payment in terms of the said bi-partite settlement.

Even after sending of valid report, when there was delay in the making of reference the Appellant union filed a writ petition and obtained an order from the High Court directing the Government to consider the representation of the Appellant union within eight weeks. Thereafter the Government made a reference to the 8th Industrial Tribunal which was challenged by the company and the company obtained an interim order restraining the Respondents from giving effect to the order of reference until further orders. The Company's contentions against the order of reference were:

(i) Reference was made behind the back of the company and as such was violative of the principles of natural justice.

(ii) Reference was made without jurisdiction as the industrial dispute on which the reference was raised by the union during the subsistence of the tri-partite settlement.

(iii) Members of the Appellant Union having accepted all the benefits arising out of the bipartite settlement without any reservation there was no expediency for making reference of the matter.

Held:

The Supreme Court in case of State of Madras (supra) and Avon Services Productions Agencies Pvt. Ltd., (supra) has held that the dispute may be actually in existence or there may be an apprehension for which reference u/s 10 of the I.D. Act can be made by the Government. The power is discretionary and administrative in nature. The question of adequacy or inadequacy of the material for forming opinion by the Government is not justiciable. According to that principle laid down by the Supreme Court that question is not justiciable by the Court.

Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, and State of Madras v. C.P. Sarathy and Ors. reported in AIR 1979 1953 SC 53, relied upon.

2. That the acceptance of the benefit arising out of the bi-partite settlement will not operate as a bar, in view of Sub-Section 7 of Section 19 of the Industrial Disputes Act, 1947.

Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, , relied upon.

That whether there was an expediency or not in the matter of reference is to be decided on evidence in the peculiarity of facts and circumstances of the present case and the same cannot be decided by the High Court in its writ jurisdiction. Accordingly, we do not defer with the submissions of Mr. Ghosh in this regard.

Mr. Gupta appearing for the Respondent Company also referred to the jurisdictional question regarding reference of the dispute to the Tribunal. That point is to be taken before the Tribunal at the initial stage in the earliest opportunity. That is the view expressed by the Calcutta High Court in the case of *Suprava Sundari Devi (supra)*. So that question cannot be decided by the High Court in its writ jurisdiction.

19. In a judgment of the Division Bench *Steel Authority of India Ltd. v. H.S. Employees Union and Ors.* 1997 (1) C.H.N. 328 which has been held as follows:

The three things appear to be essential in the context of Section 10 of the Act, firstly, there should be an industrial dispute, secondly, it should be expedient to make reference, thirdly, the term of reference should normally be specified to avoid vagueness. If there is an industrial dispute in terms of Section 2A of the Act, it is more than necessary as to the first requirement u/s 10 of the Act. It is not relevant whether the industrial dispute u/s 2A of the Act is supported by any Union of the workers or by sufficient number of workmen. If there is no industrial dispute in terms of Section 2A then alone it would be necessary to see whether the individual dispute has been espoused by the union or espoused by the sufficient number of the workmen. If there is an industrial dispute in terms of Section 2A of the Act then the Government has merely to see whether it is expedient to refer the dispute to the Tribunal. The expediency may be due to practical necessity or otherwise desirable to make reference for adjudication. The *prima facie*, satisfaction may also induce the appropriate Government to refer the dispute. The point is that it should appear expedient from the circumstances of the case. If the reference order indicates the point in dispute for adjudication it would clearly show that the Government was *prima facie* satisfied that it would be expedient to refer the matter without in any way influenced whether it is industrial dispute u/s 2A of the Act or Section 2K of the Act. In the instant case, there appears to be family rift before the death of the deceased workmen Gopi Soren. The Respondent No. 2 had virtually worked for about four years before the Appellant received the complaint from alleged wife of Gopi Soren. There were allegations and counter-allegations in respect to the status of Smt. Surojmoni Soren and such controversy has resulted even in the dismissal of the Respondent No. 2. If this incident has given birth to an industrial dispute u/s 2A of the Act, the same incident need not mature for the birth, of industrial dispute u/s 2K. As noted above, the appropriate Government has merely to see whether an industrial dispute has come into existence or not and if industrial dispute has come into existence u/s 2A of the Act, the first requirement for reference has been satisfied and the question of the expousal by other workmen or by the union of workmen becomes wholly irrelevant. The question whether the reference is expedient or not, is an independent consideration depending on the nature of the issue involved or whether *prima facie* it could be said that the issue required adjudication. It does not depend on the consideration whether the industrial dispute is u/s 2A or under 2K of the Act. The background of the termination order and the controversy in relation to the termination of the

services could only be clarified and resolved by adjudication and consequently the reference order mentions specifically the issue to be adjudicated by the Tribunal. There is no vagueness on the issue. In the instant case of the reference order has mentioned irrelevant party or has committed to mention necessary party it may not be fatal to the "validity of the reference. The Tribunal has all the power to add the party in the proceeding and this power would be incidental to the main issue of adjudication. If industrial dispute exists u/s 2A, the concerned individual would always be necessary party and he would be deemed to be a party in the reference order even though the name of the individual workman has not been mentioned. The reference order in the instant case, has clearly mentioned the name of individual workman in the issue which was framed for adjudication. It is thus clear that the order of reference in the instant case satisfied all three requirements namely existence of industrial dispute, the expediency of making reference and the specific point for adjudication. The reference order could not become bad, in the instant case, merely because an irrelevant party has been mentioned or the industrial dispute was concerned in the context of irrelevant party or industrial dispute was not considered in the context of an industrial dispute u/s 2A of the Act. The industrial dispute has taken birth u/s 2A of the Act as soon as the demand for reinstatement was made by the Respondent No. 2 and consequently there was no need for consideration whether industrial dispute of the category u/s 2K exists or does not exist. The formal defects in the reference order or clerical mistakes in the title of the reference order or irrelevant consideration of the industrial dispute u/s 2K of the Act would not vitiate the order in circumstances of this case.

The industrial tribunal could always consider whether there is an industrial dispute or there is no industrial dispute, if the tribunal holds that there is no industrial dispute then the question of any adjudication does not arise. However, if the industrial tribunal holds that there is an industrial dispute then the tribunal is bound by the terms of the reference of adjudication as the industrial tribunal is a tribunal of limited jurisdiction. If the industrial tribunal, while dealing with an industrial dispute, came to the conclusion that persons other than those mentioned were necessary for a valid determination of the said dispute, it had the ample power to summon them and if such persons were summoned to appear in the proceedings the award that the industrial tribunal may ultimately pronounce would be binding on them. The tribunal is merely to consider whether the industrial dispute exists or does not exist. If industrial dispute exists u/s 2A in a given case, it has jurisdiction to adjudicate on the issue irrespective of the fact whether industrial dispute u/s 2K exists or does not exist. The industrial tribunal can always summon the necessary party if not mentioned in the reference order and can always ignore the party which has been mentioned wrongly. The incident power in the Tribunal would always enable it to take the necessary steps in the facts of each case. The Tribunal in the instant case, has heard the issue on merit and recorded the evidence of the parties including concerned individual workman and yet at the fag end decided the reference only

on preliminary point of the jurisdiction without deciding the issue on merit. It is not that the tribunal has decided the preliminary issue on the threshold. The tribunal has even not considered whether the industrial dispute exists in terms of Section 2A in the facts of the case. The learned Single Judge of the writ Court was thus fully justified in setting aside the order of the Industrial Tribunal.

20. Therefore, on a comprehensive study of the judgment quoted above it has left no other option but to uphold that once a reference has been made u/s 10 of the Act by exercise of power by the State Government u/s 4K of the Act to the Industrial Tribunal, the later has plenary power to answer and adjudicate the rights of the parties flowing from the reference. Thus I find that the learned Tribunal has not committed any jurisdictional error by rejecting the application of the Petitioners. Accordingly, the writ petition is devoid of merit and the same is dismissed without costs.