

(1996) 01 MP CK 0099
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3698 of 1994

Sudarshan Lal Dubey

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12, 12(5), 2
Life Insurance Corporation Act, 1956 — Section 49

Citation : (1997) 1 MPLJ 87

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; R.P. Agarwal and O.P. Namdeo, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 6-9-1993 passed by the respondent No. 1, refusing to refer the industrial dispute under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") to the appropriate Tribunal that is to say the Central Government Industrial Tribunal Cum Labour Court, Jabalpur. The petitioner prays that the order dated 6-9-1993, Annexure P-7, be quashed by a writ in the nature of Certiorari and a writ of Mandamus be issued directing the respondent No. 1 to refer the matter for its adjudication by the Tribunal.

It is alleged by the petitioner that he was working as an agent under the direct supervision and control of the Divisional Manager, Life Insurance Corporation of India, Jabalpur, the respondent No. 2. It is stated by the petitioner that the respondent No. 2, Life Insurance Corporation of India is his employer and he used to work as per directions given by the Divisional Manager, Life Insurance Corporation of India, Jabalpur. It is further urged that the petitioner was served with a show cause notice by Annexure P-2, dated 10-6-1989. After receipt of

reply, the respondent No. 2, by order dated 2nd February, 1990, Annexure P-3, terminated the agency of the petitioner without holding any inquiry into the matter. Thereafter, the petitioner filed an application dated 7-1-1993 for conciliation before the Assistant Labour Commissioner (c), Jabalpur, Annexure P-4. The respondent No. 2 filed a reply to the application aforesaid on 15-2-1993, vide Annexure P-5. The petitioner, thereafter, filed a rejoinder to the reply filed by the respondent No. 2. This rejoinder is filed and marked as Annexure P-6.

There could be no settlement between the parties, therefore, the conciliation officer submitted a failure report to the respondent No. 1 for passing necessary order for adjudication of this case u/s 10 of the "the Act". Thereafter, the respondent No. 1 passed the impugned order dated 6-9-1993 which is marked as Annexure P-7. By the impugned order the respondent No. 1 had refused to refer the matter for adjudication by the Tribunal on the ground that the petitioner was not in receipt of any wages from Life Insurance Corporation of India but was in receipt of the commission in proportion to the business done by him. This relationship indicated that the petitioner and the respondent No. 2 had business relationship and, therefore, the provisions of the Industrial Deputes Act were not attracted.

The counsel for the petitioner, Shri R. K. Gupta, contended that the respondent No. 1 had no jurisdiction to decide the matter on merits because it was required to pass an administrative order u/s 12(5) of "the Act". It was contended that it is well established that when the appropriate Government exercises its power u/s 12(5) of "the Act" the reference must ultimately be made u/s 10(1) of "the Act". The Supreme Court has already held in State of Bombay Vs. K.P. Krishnan and Others, that section 12(5) of "the Act" does not confer an independent power on the appropriate Government to refer the dispute in the exercise of power u/s 12(5) of "the Act". The reference must ultimately be made u/s 10(1) thereof. There can be no quarrel with this proposition and counsel for respondent No. 2 did not dispute it. It was further contended that while exercising the power u/s 12(5) read with section 10(1) of "the Act" all that is necessary is that there should be a prima facie industrial dispute between the parties. The referring authority cannot trench upon the jurisdiction of the Tribunal while deciding the application for reference of dispute which was essentially an administrative matter. The second contention of the counsel for the petitioner was that the reason given for refusing to refer the dispute were perverse and the petitioner was definitely a workman under "the Act".

Shri R. P. Agrawal, counsel for the respondent No. 2, vehemently argued that u/s 49 of the Life Insurance Corporation of India Act, 1956, the Life Insurance Corporation of India has made Staff Regulations, 1960. The petitioner was not one of the members of the staff as provided by Regulation No. 5 of the aforesaid Regulations. He was, therefore, clearly not covered by the Life Insurance Corporation of India Staff Regulations, 1960. The learned counsel further pointed

out that the respondent No. 2, Life Insurance Corporation of India has framed Life Insurance Corporation of India (Agent) Regulations, 1972. These regulations governed the case of the petitioner. According to the counsel for the respondent No. 2 these regulations clearly show that the petitioner was merely an agent of the respondent No. 2. His function was to solicit and procure new life insurance business for the respondent No. 2 and conserve the business already procured. He was paid compensation and remuneration for the discharge of all the functions under the Regulations as per Schedule II in accordance with the work procured by him. He was not being paid any wages. It was also pointed out that the agents were required to procure minimum amount of business for the first year of agency and thereafter for the second year of subsequent year of agency as per Regulation No. 9. In short, the contention of the counsel for the respondent No. 2 was that the respondent No. 1 was right in refusing to refer the dispute to the Tribunal because it was obvious that the petitioner could not be deemed to be in service of the respondent No. 2 and he could not be held to be a workman as defined by the Act.

In the opinion of this Court it is not necessary to decide the second question raised by the counsel for the petitioner because the petition can be decided on the first question alone. The Act defined "industrial dispute" as follows, u/s 2 of the Act:-

"Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

It is clear from the definition that an industrial dispute may relate to a dispute or difference between employers and workmen connected with the employment or the terms of employment. It is not disputed that the respondent No. 2 is an industry. It is also not in dispute that the petitioner was working for respondent No. 2. However, it is asserted that he was not a workman as defined u/s 2(s) of "the Act". It is asserted that the petitioner was not receiving any wages and he was only receiving commission payable on promotion of the business of the respondent No. 2.

The definition of "wages" u/s 2(rr) of "the Act" is as follows :

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes -

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of

food grains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include -

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service."

It is clear from section 2(rr)(iv) that any commission payable on promotion, sales or business or both included in by "the Act" from 21st August, 1984 in the definition of wages. Therefore, merely because the petitioner was receiving wages by way of commission for promotion of (business of the respondent No. 2, it cannot be said that his case was not covered by the provisions of "the Act". However, the question of relationship between petitioner and the respondent No. 2 was not within the domain of the respondent No. 1 and, therefore, this question is not finally decided by this Court. This Court comes to the conclusion that the respondent No. 1 was not authorised to turn down the reference merely on the ground that the petitioner was receiving commission in proportion to the business procured by him. In the opinion of this Court the matter of relationship between the petitioner and respondent No. 2 was to be decided by the appropriate Tribunal while giving award and, therefore, the respondent No. 1 trespassed upon the jurisdiction of the Tribunal while refusing to refer the matter in dispute. It has been held in the case of Shambhu Nath Goyal v. Bank of Baroda, AIR 1978 SC 1086 that in making a reference u/s 10(1) of "the Act", the Government is doing an administrative function and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. This case has been followed by the Supreme Court in the case of Ram Avtar Sharma and Others Vs. State of Haryana and Another, . Thus, it is clear from the aforesaid decisions that the function of the appropriate Government in referring the dispute is of an administrative nature.

Now, since the matter is of an administrative nature, the respondent No. 1 would not have exercised an essentially quasi-judicial function while refusing to refer the dispute vide Annexure P-7. The quasi-judicial functions fall within the province of the tribunal to which the matter was liable to be referred to. It is true that there is a very thin line which divides an administrative function and a quasi-judicial function. Nevertheless the distinction between the two is real. The function of a quasi-judicial tribunal is to decide the lis between the parties. It has a trappings of a Court as distinct from any administrative authority. It is required to hear and observe the principles of natural justice which is not always essential

for an administrative authority. It may be true that sometimes an administrative authority may be required to act as if it is a quasi-judicial authority but nevertheless the distinction between an administrative authority and the quasi-judicial authority is clear and distinct. While exercising this power u/s 12 of "the Act" the appropriate Government is not required to hear the parties and, therefore, passes merely an administrative order. Its functions are very narrow. All that it is required to see is whether an industrial dispute exists as defined under "the Act". It is also required to see whether such a dispute is referable under "the Act". It appears to this Court that the referring authority is mostly concerned with factual matters. If on the face of it there is a dispute which could be referred, it is not the function of the appropriate Government to deal further in the matter. The appropriate Government cannot decide any matter which forms part of controversy between the parties. If it does so, it trespasses upon the jurisdiction of the Tribunal. By going to the question whether the petitioner was paid wages or commission, the respondent No. 1 went into the realm of dispute of law. It should have refrained from doing so. In the opinion of this Court it had before it a prima facie case for referring the dispute to the Tribunal.

There are number of authorities in support of the proposition aforesaid. In the case of *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, it was held that if claim made is patently frivolous, the appropriate Government may prima facie examine the case on its merits for determining whether the case is fit for reference. However, these observations do not lead to the conclusion that the appropriate Government can go in the disputed questions of facts or law. It has been held in the same case that:-

".....Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal....."

These observations of the Supreme Court have been followed in the case of *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, .

In the case of *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, it was held that:-

"Now, if the Government performs an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of Us. That would certainly be in excess of the power conferred by section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony....."

In the case of *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, it was held in para 11 as follows :-

"It is true that in considering the question of making a reference u/s 10(1) the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is -relationship of employer and employees between TELCO and the convoy drivers in considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly not permissible."

Now, only the question that survives is that as to what relief the petitioner can be granted in view of the fact that the respondent No. 1 trespassed into the territory pertaining to the jurisdiction of the Tribunal. In opinion of this Court, the petitioner is entitled to the relief of quashing the impugned order, Annexure P-7 by writ of Certiorari and he is also entitled to a writ of Mandamus, commanding the respondent No. 1 to refer the dispute to the tribunal.

Therefore, the petition is allowed. The impugned order, Annexure P-7, dated 6-9-1993 stands quashed and a Mandamus be issued to the respondent No. 1 that it shall refer the entire dispute between the petitioner and respondent No. 2, to the Central Government Industrial Tribunal Cum Labour Court, Jabalpur, in exercise of the provisions u/s 12(5) read with section 10(1) of the Act. There shall be no order as to costs.