
(1988) 06 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 214 of 1979

Sushil Borkotoki

APPELLANT

Vs

Coal India Ltd., N.E.Coal Field

RESPONDENT

Date of Decision : 10-06-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 12(5)

Citation : (1988) 2 GLJ 321 : (1988) 2 GLR 403

Hon'ble Judges : A.Raghuvir, C.J. and S.N.Phukan, J

Bench : Division Bench

Advocate : S.K.Senapati, A.R.Paul Majumdar, Advocates appearing for Parties

Judgement

Raghuvir, C.J.—Sushil Borkotoki was employed by the Assam Railways Trading Company Limited as a Rent Collector and he was paid daily wages. On December 1, 1971 he was accorded the status of a monthly rated worker, when the collieries were nationalised Borkotoki was treated as a member of the permanent staff of Coal India Limited, Margherita.

2. The Estate Officer at Margherita served two charges on Borkotoki on October 1, the other on 11, 1975. In the former charge he was alleged to have collected Rs. 500/ from one Chang Shaw on September 1, 1974. The other charge was on January 1, 1975 that he collected Rs. 30/ from "GMAL's" land as rent. The two amounts Rs. 500/ and Rs. 30/ were alleged to have been misappropriated by him. The two charges were denied by the worker. The Estate Officer held against him. He dismissed the worker from service on January 10, 1976. There was an attempt of conciliation by the Assistant Labour Commissioner. The worker before the conciliation complained of copies of documents on which the charges were founded were not supplied to him. The Assistant Labour Commissioner in two meetings with the Estate Officer once on August 19, 1978 and the second time on September 12, 1978 in the two meetings the Estate Officer promised to furnish documents to the worker. The documents were not furnished. The conciliation thus became abortive. The Conciliation Officer recorded the workman

was agreeable for conciliation but the Estate Officer was not willing for conciliation. The worker therefore approached the Government of India for a reference under section 10 of the Industrial Disputes Act. That request was not accorded. The Government passed the impugned order and it reads. "In continuation of this Ministry's letter of even number dated the 22nd November, 1978. I am directed to say that the Government of India have decided not to refer the above mentioned dispute for adjudication, as the action of the management in dismissing the workman concerned, after holding proper enquiries, does not appear to be malafide or unjustified." The correctness of the order of the Government of India is assailed in the Civil Rule. From the facts set out it is obvious decisions was reached by the Government of India under clause 5 of the section 12 of Industrial Disputes Act, 1947 (Act 14 of 1947).

3. In this Civil Rule it is argued on behalf of the petitioner the worker is denied of the remedy to approach a Court by the decision of the Government of India. Questions of fact and questions of law that arise in the case are decided by the Government in an improper manner by the Government without considering law that is applicable to the facts of the case. The Government of India argued in this Court , the impugned order was passed under clause 5 of section 12 of the Act and the Government was entitled and vested with the power to pass the impugned order. It is further argued that no right of the workman was infringed. This is the only issue raised in the case. Broadly we may say the issue is whether the order passed by the Government of India is a proper order.

4. We may at first consider the common cases cited by the worker and the Government of India. The first case is (State of Bombay vs. K. P. Krishna) AIR 1960 SC 1223 in that the powers of the Govt. for making a reference was considered by the Supreme Court of India. The view of the High Court in the case that a reference can be made only under section 12 (5) in the case was over turned. It was pointed out on the other hand section 10 empowered the appropriate Government to make reference whenever a dispute was referred for reference. "In other words, the material provisions contained in subsections (3) to (7) of sec. 10 (1) which are an integral part of the scheme of reference prescribed by Chapter III of the Act clearly indicate that even if the appropriate Government may be acting under section 12 (5) the reference must ultimately be made under sec. 10(1)." The appropriate Government in another case it was held in AIR 1964 SC 1617 Bombay Union of Journalists vs. State of Bombay, should not purport to reach a final decision on questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. 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. "However, if the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Finally it was held" If the Government acts honestly and bonafide and if the appropriate Government refuses to make a reference for irrelevant consideration, or on extraneous grounds, or acts malafide that of course would be another matter ; in such a

case a party would be entitled to move the High Court for a writ on mandamus". In a very recent case the Supreme Court reviewed the cases on the subject from the prospective of the Tribunal in AIR 1985 SC 915 (Ram Avtar vs. State of Haryana) and held "the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function." It is equally well settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision."

5. In the instant case the workman contends employment in his only source of livelihood and his argument is like in the adage "you take my life when you do take the means whereby I live" (Shakespeare Merchant of Venice) "life is cut when life line is cut". These precepts show the importance of employment for a workman.

6. In the instant case two charges were framed against worker and if charges are proved the worker stands dismissed. The worker made a serious allegation against the Estates Officer that he was not fairly dealt with by the employer. He was deprived of opportunities which a worker is entitled in law. He was not given papers on which the charges are found. The Estates Officer agreed to supply the documents before the Conciliation Officer but failed to do so. The worker in this circumstances approached the Government of India. The Government of India in the impugned order held that the dismissal of the workman is justified. It was not malafide order. For a minute we keep aside malafide apart. How does the Government of India hold the dismissal is justified when papers or documents founded on which charges were framed were not supplied. How can in such circumstances the dismissal of the workman can be held justified, we are aware that we are not sitting in appeal against the impugned order. It is the Labour Court which has to inquire into the case. We say all this because of the decision of the Government of India. A citizen under the laws of the country because of Article 21 of the Constitution of India can not be denied to the protection of laws of the country. Therefore the impugned order in law cannot be sustained as it is not legal and proper order.

7. For the aforesaid reasons the impugned order is quashed. The Civil Rule is allowed. The Government of India is directed to make reference under sec. 10 of Act 14 of 1947 to the appropriate authority. No costs.