
(2011) 08 MAD CK 0149

In the Madras High Court

Case No : Writ Petition No. 7894 of 2009 and M.P. No. 1 of 2009

Swaathi Enterprises

APPELLANT

Vs

The Government of India

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0149

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Murugamanickam, for the Appellant; S. Arunachalam, Associates for R 2 and V.J. Arunkanagaraj, for R 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition seeking to challenge an order of reference made by the first Respondent, Government of India, Ministry of Labour, dated 27.2.2009. By the aforesaid order, the Government of India had referred the issue relating to termination of 23 workers as per the names annexed to the order for adjudication by the Central Government Industrial Tribunal-cum-Labour Court at Chennai. It was also stated that in case the Tribunal holds that termination was erroneous, then what relief those workmen were entitled to?

2. It is seen from the records that the second Respondent trade union had raised a dispute relating to non employment that termination of 23 workers were in order to destroy their trade union. On the representation sent by the second Respondent, notice was issued to the Petitioner. The Petitioner submitted a remarks dated 10.3.2008 stating that they had decided to close the quarry operations with effect from 1.11.2006 and they had also informed the authorities. Since the workers owning agricultural lands, they are only working as a part time workers. But the workers were asked to come and collect their dues. On the contrary, they had entered into a contract for granite quarry with one Sridhar under raising-cum-sale system. It is only the said Sridhar who is running

the quarry. Since the second Respondent union had insisted on the said contractor to recruit their members, he had also agreed to do so if so required. But, instead of persuading claim with the agreement holder, they had raised a dispute.

3. The Conciliation Officer, i.e., Assistant Labour Commissioner (Central), Chennai as he could not bring about mediation, had recorded the failure of conciliation u/s 12(4) of the I.D. Act and sent the report, dated 5.6.2008 to the first Respondent Government of India. The Government of India, by an order dated 15.10.2008 had declined to order reference on the specious ground that the matter was sub-judice before the Munsif Court, Attur, Salem. Hence reference could not be granted.

4. It must be noted that the suit in O.S. No. 428 of 2007 was filed before the District Munsif Court, Attur seeking for an interim injunction against 22 workers covered by the reference. It was only a bare injunction suit. It was filed on the basis that he is an agreement holder to operate the quarry and had obtained agreement from the Petitioner. The 22 workers were indulging in unlawful activities and trespassing into the quarry land. It is not clear as to how the Government of India can refuse to refer on the ground of pendency of civil suit relating to the claim for bare injunction against the workers. The issue before the Government of India was whether the termination by the Petitioner in respect of 23 workers was justified or not? However, the Government of India by the impugned order had reconsidered the entire issue and had issued the impugned order, dated 27.02.2009 and referred the matter for adjudication by the third Respondent Tribunal. Even before the third Respondent could take up the issue for adjudication, the Petitioner filed the writ petition which was admitted on 27.4.2009 and an interim stay was granted.

5. On notice from this Court, the first Respondent Government of India had filed a counter affidavit dated Nil (February, 2010). It was stated that the Government has power u/s 10(1) to refer the dispute at any time and the power does not dry up merely because it was initially refused. Further, the Government of India has jurisdiction to refer the dispute relating to mines as the appropriate Government is the Government of India.

6. On behalf of the second Respondent Union, a counter affidavit dated Nil (February, 2010) was filed. In the counter affidavit, it was stated that the Petitioner was indulging in an unfair labour practice and was creating an unnecessary civil dispute. The civil case has nothing to do with the dispute raised by the union. They had also filed a typed set of documents containing documents to show that there was a real dispute between the second Respondent union and the Petitioner employer.

7. Mr. T.Murugamanickam, learned Counsel for the Petitioner placed reliance upon a judgment of a division bench of this Court in O.N.G.C. Madras Port Contract Employees" Union Vs. The Management of Oil and Natural Gas

Corporation Ltd. and Others, for contending that the order of reference of the industrial dispute for adjudication after declining the reference earlier is amenable to the writ jurisdiction. For making a second time reference, there must be an application of mind to relevant considerations and relevant materials. But in the present case, it was declining reference for the first time by the Government of India was without any application of mind for pending bare injunction suit which has No. relevance to the case on hand.

8. On the contrary, the Supreme Court vide its judgment in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, had observed as follows:

In the light of the 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 a 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

9. Once again the Supreme Court in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, held that there was No. absolute bar in making reference after the earlier order of reference was refused by the Central Government. Though the judgment in *Avon Services Production Agencies (P) Ltd.* came to be quoted with approval in paragraph 21 of *ONGC Madras Port Contract Employees" Union case* (cited supra), yet in paragraph 22, the division bench made a distinction of the earlier judgment of the Supreme Court. Therefore, it is necessary to refer to paragraphs 21 and 22 of *ONGC Madras Port Contract Employees" Union case* (cited supra), which is as follows:

21. We agree with the learned Counsel for the Appellant that No. opportunity of hearing need be given to the employer nor reasons recorded in the reference order even if earlier reference had been refused, and No. fresh material is required for making a reference as held in *Avon Services case* (supra). 22. However, the law is now well settled that even an administrative order is subject to judicial review, though on much more limited grounds than a quasi-judicial order. In other words, the grounds for challenging an administrative order are much narrower than the grounds available for challenging a quasi-judicial order. However, it cannot be said that an administrative order can never be challenged at all.

10. But, in the present case, it was the first order of reference which has been mechanically made by the Central Government and on being pointed out, the Central Government had corrected itself. As long as the order does not suffer from any illegality, this Court is not inclined to entertain the writ petition

especially under the stage of reference. If any other grounds are to be raised by the Petitioner, he has to file an appropriate written statement before the Tribunal and convince the Tribunal about their operation not coming within the purview of the Central Government or that the termination of workers was legal and proper.

11. Under these circumstances, this Court is not inclined to interfere with the impugned order. Hence the writ petition will stand dismissed. No. costs. The third Respondent Tribunal is directed to proceed to hear the reference after due notice to the parties. Considering the reference was of the year 2009, the Tribunal is also directed to give preference for the disposal of the dispute. Consequently, connected miscellaneous petition stands closed.