

(1989) 03 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 507 of 1988

Taj Services Limited

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 31-03-1989

Acts Referred:

Citation : (1989) 17 DRJ 6 : (1989) 58 FLR 911 : (1989) ILR Delhi 611 : (1991) LabIC 637 : (1990) 2 LLJ 183

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : Vinay Bhasin and K.K. Rai, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) In this writ petition under Article 226 of the Constitution the challenge is to the reference made by the Delhi Administration u/s 10(1) of the Industrial Disputes Act, 1947 referring the dispute to the Industrial Tribunal.

(2) Briefly stated the facts are that, according to the petitioner, the company has a printing unit at NOIDA(U,P.). The workmen of the said unit raised a demand and proceedings commenced before the conciliation officer. Thereafter, an order was passed on 4th February, 1988 by the Labour Commissioner, Delhi, to the effect that reference of the dispute could not be made to the Industrial Tribunal as the printing division of the petitioner was located at Noida (Uttar Pradesh) and the Union Territory of Delhi was not empowered to adjudicate upon the matter. Subsequently the impugned order was passed on 28th March, 1989 whereby reference was made u/s 10(1) of the Industrial Disputes Act to the Industrial Tribunal. There were three terms of reference which were made.

(3) The petitioner filed this writ petition challenging the jurisdiction of the Delhi Administration to make the reference. The contention of the petitioner is that the Delhi Administration is not the appropriate government which is competent to make a reference inasmuch as the workmen are employed at the printing unit at

Noida, which is in the State of Uttar Pradesh. According to the petitioner, the registered office of the company is at Bombay, and the unit at Noida, was independent, having obtained an industrial license in the State of Uttar Pradesh and also a separate Sales tax registration and E.S.I, number.

(4) A preliminary objection has been raised before me by respondent No. 2 to the maintainability of the writ petition. It is contended by the learned counsel for the respondent that the questions to whether the Delhi Administration is an appropriate government or not is one which can be raised before and decided by the Industrial Tribunal, and the proceedings before the Industrial Tribunal should not be interfered with or thwarted by filing a petition under Article 226 of the Constitution.

(5) Shri Bhasin on the other hand submits, very vehemently, that the petitioner is seeking to challenge the jurisdiction of the Delhi Administration to refer the dispute to the Tribunal. According to the petitioner. the Delhi Administration has no territorial jurisdiction to refer the dispute as it is not the appropriate government. This question, it is submitted, goes to the root of the matter and if decided in favor of the petitioner, would bring the adjudication to an end.

(6) There was a time when preliminary objections to the reference used to be raised as preliminary issues before the Industrial Tribunal itself, and on the said issues being adjudicated upon, the decision used to be challenged either by filing a petition under Article 226 or by filing a SLP under Article 136 of the Constitution. What the petitioner has done in the present case is that it has not waited for raising the preliminary objection regarding the maintainability of the reference before the Tribunal, but it has sought to challenge the reference itself by filing the present petition under Article 226 of the Constitution. To my mind, the decision of the Supreme Court in the case of D.P. Maheshwari Vs. Delhi Administration and Others, has set down the new principles as to how the Court should approach such preliminary issues. The Supreme Court noted that there was a time when it was thought prudent and wise policy that the preliminary issued would be first decided, before deciding the case on merits. The Supreme Court, however, observed in Maheshwari's case "But the time appears to have arrived for a reversal of that policy". The Supreme Court has now, in Maheshwari's case, laid down the following principles which are opposite to the present case :

"WE think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to

wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

(7) What would follow from the aforesaid observations of the Supreme Court is that once a reference has been to an Industrial Tribunal, then all the issues which arise, whether jurisdictional or on merit, must be decided before the writ court or appellate court interferes. In other words, the process of industrial adjudication by the Industrial Tribunal must be completed as expeditiously as possible. It is to be noted that ordinarily the prolonging of a proceeding before the Industrial Tribunal is more often than not to the disadvantage of the workman. The management may be able to afford the expense which may have to be incurred in an effort to prolong the proceedings. The effort of the writ court should be that the proceedings before the Industrial Tribunal should be completed as soon as possible.

(8) Practical experience shows that writ petitions, when admitted, may not be finally disposed of within a short time. If a writ petition under Article 226 is entertained where there is a challenge to the reference made, it may take a number of years before the same is decided. It cannot be assumed that the Writ petition, which is admitted is bound to succeed. If after a number of years a petition filed under Article 226, like the present, wherein challenge is made to the validity of the reference, ultimately fails the result would be that there would be considerable delay in the decision of the Industrial Tribunal on merits.

(9) The Supreme Court in D.P. Maheshwari's case was dealing with a dispute which had originated in 1969 and the questions involved were still preliminary in nature and there had been no decision on the merits of the dispute till after the Supreme Court decided in the year 1983. If the present writ petition had been dealt with in the normal way, as the other writ petitions are heard, it would have been nearly a decade before the present writ petition would have come up for final hearing.

(10) Merely because the writ court can entertain and decide the question with regard to the jurisdiction of the appropriate authority or the State Government to

make a reference u/s 10 cannot, by itself be a reason for the Court to interfere with the reference at that stage. The validity of a reference may depend upon the existence of various jurisdictional facts, for example, reference may be on the ground that the respondent is not a workman, within the meaning of the Act, or the dispute which is referred cannot be categorised as an industrial dispute or reference has not been made by the appropriate government. The existence of these jurisdictional facts can be agitated before the Industrial Tribunal, and in view of the observations of the Supreme Court in Maheshwari's case it is time that the writ court ceased to exercise its jurisdiction under Article 226 of the Constitution at the very threshold of the reference. A special tribunal is set up where all questions can be decided and, in this age of specialisation, it is more appropriate that the specialised agency, namely Industrial Tribunal, should first adjudicate and decide all the issues arising before it before the matter is agitated in the higher courts.

(11) Learned counsel for the respondent states that if a contention is raised before the Industrial Tribunal that the reference has not been made by the appropriate government, then the respondent will not contend and nor can it in law contend, that the Industrial Tribunal cannot decide that question. The said question, namely, whether the reference has been made by the appropriate government or not can and will be decided by the Industrial Tribunal.

(12) The petitioner and the respondents will be entitled to raise all the contentions raised in this writ petition before the Industrial Tribunal.

(13) For the aforesaid reasons, the preliminary objection is sustained, and the writ petition is dismissed. There will be no orders as to costs.