

(1994) 07 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Petition No. 1829 of 1990

Tarlok Chand and Others

APPELLANT

Vs

National Industrial Development Corporation Ltd. and Others

RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 AD 604 : (1994) 55 DLT 157 : (1994) 30 DRJ 206 : (1994) 2 LLJ 1130

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : K. Parsad, S. Mukherjee and S.N. Bhandari, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is writ petition filed by petitioners under Articles 226 and 227 of the Constitution of India alleging that they have been working as daily-rated workers under the respondent Corporation on the post of "Safai Karamchhari" for more than 240 days and are entitled to be regularised to the said posts, but the respondent is in a malafide manner continuing them as daily-rated workers as a result whereof their salaries are considerably lower than the salaries paid to permanent employees appointed to similar posts and performing similar work and have prayed for-

"(A)issue of a writ of mandamus directing, the respondents for continuation of the services of the petitioners on the post of "Safai Karmachari".

(b) a direction to the respondents for regularising the services of the petitioners and to appoint them in the permanent post of their services whenever, vacancy in the permanent post of their service will occur. (c) that the respondents may kindly be prohibited or restrained by issuance of a writ of prohibition to disturb the continuance of the services of the petitioners; (d) that the respondents may kindly be directed to pay the same emoluments to the petitioners which are paid

to the regular "Safai Karmachari".

(2) This Court issued notice on the said writ petition and a reply thereto was filed by the respondents wherein certain preliminary objections were raised to the maintainability of the writ petition. It has been contended that the allegations in the petition involved determination of rights and grant of remedies which are provided for under the Industrial Disputes Act, that the petitioners have the adequate and efficacious alternate remedy available and that the subject matter of the present petition involved determination of disputed questions of facts, which can be determined on the basis of the evidence and that for these reasons this court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

(3) At the time of hearing lengthy arguments were addressed on the question of maintainability of the petition and also as to whether the provisions of Industrial Disputes Act as amended from time to time afforded the petitioners an adequate and efficacious alternate remedy. After hearing the parties for a while, I considered it appropriate to appoint an amicus curiae for my assistance. Consequently I appointed on 1st September 1992 Mr.S.N.Bhandari, Advocate, as an amicus curiae to assist the court on the said preliminary objection. The arguments were concluded by Mr. Bhandari. Thereafter, counsel for the petitioner sought time on a number of occasions to prepare for arguments. Finally, the petitioners filed a written note and concluded their arguments. The amicus curiae was required to assist further which he did by submitting a note of the arguments.

(4) At this stage, the arguments have been heard only on the preliminary objection, i.e., whether the discretion of extraordinary jurisdiction vested in the Court under Article 226 of the Constitution of India is to be exercised in a case of present nature where adequate and efficacious remedy is alleged to be available to the petitioners under the Industrial Disputes Act, 1947; and (2) whether the allegations of fact in the petition are such as would require determination of disputed questions of fact and for that reason also this Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

(5) The question that first falls for consideration is as to whether the provisions of Industrial Disputes Act provide an adequate and efficacious alternate remedy to the petitioners. Although the petitioners have contended that they have no other alternative remedy, a perusal of the provisions of the Industrial Disputes Act 1947 brings out a different picture. The Industrial Disputes Act was amended vide Act 46 of 1982 and that the amendments came into force w.e.f. 21.8.84. By virtue of the said amendments. Sections 2(ra), 25T, 25U and 5th Schedule were added to the Industrial Disputes Act. The said provisions read as under:-

"SEC.2(RA)- "unfair labour practice" means any of the practices specified in the Fifth Schedule:"

"SEC.25T- No employer or workman or a trade union, whether registered under

the Trade Unions Act 1926 or not, shall commit any unfair labour practice".

"SEC.25U- Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both".

The 5th Schedule to the Industrial Disputes Act contains list of unfair labour practices. Items 7 and 10 of the 5th Schedule to the Act which are relevant in the present case read as under:-

"7.To transfer a workman mala fide from one place to another, under the guise of following management policy."

"10.To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

(6) Thus the legislature has defined the term of "unfair labour practice" u/s 2(na) and enumerated the said practices in the 5th Schedule respectively thereby the legislature has barred the employers from resorting to such practices and has further provided for punishment to those who commit any of the said "unfair labour practices". This is of course in addition to the right of workman to raise a substantive industrial dispute which can be referred by the "appropriate government" u/s 10 of Industrial Dispute:- Act to the labour court or the Industrial Tribunal, as the case may be, for adjudication and award of appropriate relief.

(7) The question of exercise of extraordinary jurisdiction under Article 226 has in the past come up for consideration before the Hon'ble Supreme Court and the Hon'ble Court had laid down the principles in its various judgments. It will be appropriate to quote some of those here under:- "(a) State of Madhya Pradesh Vs. Bhailal Bhai and Others, - At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defenses legitimately open in such actions." (b) Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, "....It is true that the powers conferred on the- High Courts under Article 226 are very wide, but it is not suggested by Mr.Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to section 10 of the Industrial Disputes Act, or seek relief, if possible, under sections 74 and 75 of the Act." (c) Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes,

" THE jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and exercise thereof is not subject to any restrictions

except the territorial restrictions which are expressly provided in the articles. But the exercise of jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitation.Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed and will leave the party applying to it to seek resort to the machinery so set up".

(d) Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, "Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the later case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not." (e) K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, -

"it is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off."

(f) Union Of India Vs. T.R. Verma Air 1975 Sc 882 - ".....It is well settled that when an alternate and equally efficacious remedy is open to a litigant he should be required to preserve that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmad Vs. Municipal Board Kairana the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. (g) Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, - -

"but it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Court will not go beyond those whole some inhibition or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug, should be judiciously administered."

(8) Even after the enforcement of Act 46 of 1982, the question of jurisdiction of Civil Court in respect of matters relating to the enforcement of rights arisen

under the Industrial Disputes Act came up for consideration before the Hon''ble Supreme Court in the case of Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, , when the Hon''ble Court laid down that the scheme of Industrial Disputes Act clearly excludes the jurisdiction of Civil Court by implication. The Court in this case had observed as under-

"...LTis Therefore clear that this Act, i.e Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances Therefore there is an apparent implied exclusion of the jurisdiction of the civil court."

".....IT is Therefore clear that the scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies which are available under this Act and for which a complete procedure and machinery has been provided in this Act."

(9) HON''BLE Supreme Court in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , after examining the scheme of the Industrial Disputes Act, 1947 found that an extensive machinery has been provided for settlement and adjudication of industrial disputes and had summed the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute:- (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of tiny other right under the Act the remedy lies only in the Civil Court. (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to gel an adjudication under the Act. (4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33C or the raising of an Industrial Dispute as the case may be.

(10) In the last two cases the Hon''ble Supreme Court was concerned with the jurisdiction of Civil Courts vis-a-vis Industrial Tribunal and Labour Court.

(11) Again in the case of Dinesh Prasad and Others Vs. State of Bihar and Others, , a Full Bench of Patna High Court observed as follows:-

"to conclude on this aspect, the answer to question framed at the outset is rendered in the affirmative and it is held that the statutory reference of an industrial dispute u/s 10 is in adequate and efficacious legal remedy for the enforcement of the rights created under the Act."

(12) In the case of Chundrama Singh Vs. Managing Director, U.P. Cooperative

Union and Others 1991 11 LIn 1084, Full Bench of Allahabad High Court observed as under:-

"on the pleadings contained in the instant petition the petitioner should not be allowed to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner has complained violation of the provisions of Sec.25F of the Industrial Disputes Act, 1947, and for redressal of this grievance an adequate and efficacious remedy of reference under (lie provisions of Sec.10 of the said Act itself exists. The petitioner has neither pleaded nor proved the said remedy to be inadequate or inefficacious. He has also not demonstrated the existence of any exceptional or extraordinary circumstances to permit him to bypass the alternate remedy available to him under the Industrial Disputes Act, 1947. The petition deserves to be dismissed on the ground of availability of.altemative remedy to the petitioner "

(13) The question of jurisdiction of civil court also fell turn consideration before the High Courts of Kerala, Karnataka and Madras in the cases of Kerala Rubber and Reclaims Ltd and others Vs P.A. Sunny (1988) 73 Fjr 507, V.Mookan Vs. Southern Roadways Ltd and another (1989) 74 Fjr 252 and T.Rajaiah and others Vs. Southern Roadways Ltd Madurai and another 1991 1 Clr 884 respectively and they have also held the Same view in the said rulings regarding the exclusion of the jurisdiction of the civil court referred to here in above.

(14) The entire argument of the petitioners has proceeded on the merits relating to the disputed questions of fact and that the petitioners have made no attempt to show anything to the contrary either in the written .arguments or on oral argument for which ample opportunity was afforded to the counsel for the petitioners. Although the petitioners have not argued or advanced any argument that they have filed the writ petition against the respondents as it is an instrumentality of State. Even if they had advanced such an argument I would not consider that alone to be a good ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in the light of the law laid down by the Hon''ble Supreme Court. Such a question has already come up before the Karnataka High Court twice and answered similarly in the cases of Hariba Vs. K..S.R.T.C. 1983 XI LLJ 76 and B.Sreeramulu Vs. Karnataka State Road "Transport Corporation and others 65 Fjr 155.

(15) A reading of the aforesaid provisions of Act 46 of 1982 clearly shows that the cases of "unfair labour practice" including those of casual or temporary workers who are continued for years with the object of depriving them of the status are the rights created under the Industrial Disputes Act and if any dispute arises with regard to the said rights of the parties as already observed here in above the dispute can be referred by the appropriate government for adjudication to Labour Court or Industrial Tribunal as per the provisions of the Industrial Disputes Act who will adjudicate upon the terms of reference after looking into the evidence and the law placed before him.

(16) A plain reading of the petition and the counter affidavit also shows that the allegations of fact in the petition are disputed by the respondents. As such there are disputed questions of fact also involved in the present case. I am also satisfied that this is a case where there is an adequate and efficacious alternate remedy available to the petitioners under the provisions of Industrial Disputes Act 1947 and further that the Tribunal created under the said Act is the appropriate forum to go into the disputed questions of fact after looking into the evidence that may be adduced to by the parties.

(17) In the light of the above discussion, I hold that it is not a fit case where the extraordinary jurisdiction under Article 226 of the Constitution should be exercised as the subject matter of the writ petition involves determination of disputed questions of fact and there is an adequate and efficacious specific alternate remedy available to the petitioners under the Industrial Disputes Act. Accordingly I dismiss the writ petition, without prejudice to the rights of the petitioners to avail of such alternate remedy or remedies as may be available to them for the enforcement of the alleged rights.

(18) Before concluding it is only appropriate to place on record the appreciation of this Court for the able assistance rendered by Mr S.N.Bhandari, the amicus Curiae to this Court.

(19) In the circumstances, there will be no order as to costs.