

(1984) 12 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 315 of 1983

The Orissa Kendupatra Karmachari Sangh

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 12-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1985) 1 OLR 212

Hon'ble Judges : J.K. Mohanty, Acting C.J.; D.P. Mohapatra, J

Bench : Division Bench

Advocate : B.B. Rath and M. Mishra, for the Appellant; Standing Counsel, for the Respondent

Judgement

D.P. Mohapatra, J.—The Orissa KEndupatra Karmachari Sangh (hereinafter called "the union") a trade union registered under the Indian Trade Union Act, 1926 has filed this application under Articles 226 and 227 of the Constitution of India for quashing of the order of the State Government, dated 7. 1. 1983 refusing to refer the demands raised by it for adjudication by the Industrial Tribunal (Annex.-2) to the writ petition.

The gist of the facts relevant for the present proceeding is that the members of the petitioner-Union are workmen employed by the Additional Chief Conservator of Forest (Kendu Leaves), opposite party No. 2, in the Kendu Leaves trade, monopoly right whereof is vested with the said opposite party No. 2. The Union submitted a charter of demands of 21 items to bring about improvement in conditions of service of the employees in the industry. The employer, opposite party No. 2, paid no heed to the said demands. The Union then raised the dispute before the conciliation officer. The conciliation proceeding too ended in failure and the conciliation officer submitted a failure report (Annex.-I to the writ petition). The State Government in the Labour Department which is the competent authority to consider the question of making a reference to the

Tribunal under Sections 10(1) and 12(5) of the Industrial Disputes Act failed to take action as required under law. Hence, the petitioner-Union approached this Court with a writ petition O. J. C. No. 1972 of 1982 which was disposed of on 17. 11. 1982 with a direction to the State Government to take a decision on the conciliation failure report within two months from the date of the order. In pursuance to the said direction the State Government passed the impugned order negating the claim of the petitioner-Union, for a reference to the Tribunal.

2. The impugned order is challenged on the ground that it suffers from non-application of mind and the reasons given by the State Government for refusal to refer the disputes to the Tribunal are not relevant and germane to the matter in issue.

3. Before going to the merits of the contentions raised by the learned counsel for the petitioner it will be helpful to quote the oft quoted passage from the judgment of the Supreme Court in the case of *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*,

"In entertaining an application for a writ of mandamus against an order made by the appropriate Government u/s 10(1) read with Section 12(5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. It would be idle to suggest that in giving reference to a party for refusing to make a reference u/s 12(5), the appropriate Government has to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference. It is no doubt desirable that the party concerned should be told clearly and precisely the reasons why no reference is made, because the object of Section 12(5) appears to be to require the appropriate Government to state its reasons for refusing to make a reference, so that the reason should stand public scrutiny; but that does not mean that a party challenging the validity of the Government's decision not to make a reference can require the Court in writ proceedings to examine the propriety or correctness of the said reasons. If it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign that no doubt, may justify the claim for a writ of mandamus. But the argument that of the pleas raised by the retrenched workman, two have been considered and not the third, would not necessarily entitle . the party to claim a writ under Article 226,"

From the above observations of the Supreme Court the position is clear that the scope for interference with the impugned order by this Court in exercise of its writ jurisdiction is extremely limited. Examining the order in the light of this principle, we find that the reasons for non-reference given against some of the items are ex-facie not sustainable. The said items of demands along with the reasons for non-reference are given hereunder.

" Sl. No. Demand. Reasons for non-reference. 1. Revision of minimum wage and

1. Legal remedies are available in fixation at Rs.10/-per day keeping respect of his demand under the in view the soaring price. Minimum Wages Act, 1948. XX XX XX 8. Provision of conveyance for the 8. Kendu leaf operation is carried seasonal staff and workers. on in forest areas where road communication is not adequate. So this docs not merit reference. 9. Grant of 20% bonus to the 9. Legal remedies are available seasonal staff and pluckers. under the payment of Bonus Act. XX XX XX XX 11. Fixation of rates of plucking 11. This demand is covered under of Kendu Leaves pluckers. the provision of M. W. Act, the I. D. Act. 12. The benefits given to the 12. The pluckers are not workmen seasonal staff and workers should be under the I. D. Act. extended to the pluckers. 13. Fixation of wages for binding 13. This demand is covered under mistries, pluckers mates, etc. the M.W. Act. XX XX XX XX 15. Treatament of seasonal workers 15. This demand is covered under as per with regular workmen the provisions of M. W. Act. fixation of pay of seasonal workmen. So far as the other items of demands are concerned, on careful consideration we are unable to accept the contentions of the learned counsel for the petitioner that the reasons given against any of them are irrelevant and suffer from legal infirmity as indicated in the above mentioned decision of the Supreme Court. The learned Standing Counsel appearing for the opposite parties agrees that the reasons against the order refusing to refer the items of demands mentioned above are . irrelevant and cannot be up held.

5. In the result, the writ application succeeds in part and the impugned order, so far as it concerns demands, mentioned against items 1, 8, 9, 11, 12, 13, and 15 is set aside. The opposite party No. 1 is directed to reconsider the question of reference to the Industrial Tribunal in respect of the aforesaid items and pass appropriate orders in accordance with law within a period of two months from to-day. , In the circumstances, of the case there will be no order for costs of this proceeding.

J.K. Mohanty, A.C.J.

6. I agree