

(2012) 05 GAU CK 0002
In the Gauhati High Court
Case No : W.A. No. 271 of 2010,

The Secretary, Assam Tea Worker's Union	APPELLANT
Vs	
Baghjan Tea Estate and Others	RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(1)(c), 10(8), 10A
Penal Code, 1860 (IPC) — Section 147, 149, 323, 325, 342

Citation : (2013) 136 FLR 625 : (2012) 3 GLD 476 : (2013) 1 LLN 689

Hon'ble Judges : Adarsh Kumar Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : A. Bhattacharyya, for the Appellant; D. Baruah, for the Respondent

Judgement

Ujjal Bhuyan, J.—This writ appeal has been preferred by the Assam Tea Workers Union ("the appellant union" hereafter), representing the cause of the workmen. against the judgment and order of the learned Single Judge dated 04-05-2010 passed in W.P.(C) No. 1768/2006 which was filed by the Baghjan Tea Estate ("respondent management" hereafter). The facts of the case may be briefly noted.

2. The Government of Assam in the Labour Department made a reference u/s 10(1) of the Industrial Disputes Act, 1947 (briefly "the Act" hereafter) to the Labour Court, Dibrugarh on 28-10-1986 to the following effect:--

1. Whether the management of the tea estate was justified in dismissing the 28 workmen from service?

2. If not, whether the said workmen are entitled to reinstatement with full back wages and other benefits or any other reliefs in lieu thereof?

3. On the basis of the same, Reference Case No. 13 of 1986 was registered. At that stage, the cause of the dismissed workmen, was represented by the Assam Chah Mazdoor Sangha (proforma respondent herein). On 21-05-1987, there was no representation on behalf of the workmen. Taking the view that they were not

interested in the case, the learned Labour Court passed an award of even date holding that there was no cause for the reference made.

4. According to the workmen, in the first week of February, 1999, they came to know about the above order of the Labour Court. During this period, the workmen had to defend a criminal case initiated at the instance of the management, being GR Case No. 163 of 1984 under Sections 147/ 342/ 323/ 325/ 448/ 149 of the Indian Penal Code (IPC) before the learned Judicial Magistrate, Tinsukia. All the workmen were acquitted in the said criminal case vide the judgment and order dated 29-06-1998. The workmen were highly aggrieved at the inaction of the proforma respondent, who according to them, did not properly pursue their case. Subsequently, the appellant union came forward to espouse the cause of the workmen.

5. The appellant union then filed W.P.(C) No. 5156/2000 before this Court seeking a direction to revive the Reference Case No. 13 of 1986 for adjudication on merits. The said writ petition was admitted and was pending before this Court when the Government of Assam issued a notification on 11-10-2004 directing the Labour Court to revive the Reference Case No. 13/1986. In view of the said development, the appellant union withdrew the writ petition on 16-11-2005.

6. Thereafter, the learned Labour Court issued notice to the parties where upon both the sides appeared and filed their respective written statements. By order dated 06-12-2005, the learned Labour Court held that the reference case should be revived and that it should be adjudicated afresh in presence of both the parties as the industrial dispute still subsists.

7. Against the aforesaid order dated 06-12-2005 and the Government notification dated 11-10-2004, the respondent management filed W.P.(C) No. 1768/2006. As noticed above, the learned Single judge by the judgment and order dated 04-05-2010 allowed the said writ petition by setting aside and quashing the above notification dated 11-10-2004 and the order of the learned Labour Court dated 06-12-2005. Hence this appeal by the appellant union.

8. Heard Ms. A. Bhattacharyya, learned counsel for the appellant union as well as Mr. D. Baruah, learned counsel for the respondent management

9. Learned counsel for the appellant referring to the definition of award under the Act, submits that the order of the learned Labour Court dated 21-05-1987 is no award in the eye of law. She further submits that no time frame has been laid down in the Act for making a reference and that the Government has the power to revive a reference so long the dispute exist. She prays for interference with the judgment of the learned Single Judge as all that the appellant seeks is a decision of the industrial dispute on merit. She has placed reliance on the following decisions in support of her argument:--

(1) Cox and Kings (Agents) Ltd. Vs. Their Workmen and Others,

(2) Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, and

(3) Virendra Bhandari Vs. Rajasthan State Road Transport Corporation and Others,

10. Learned counsel for the respondent management on the other hand reiterates the submissions made before the learned Single Judge. Referring to various provisions of the Act, learned counsel submits that the referred industrial dispute having culminated in the passing of the award, which has attained finality, can neither be revived nor the impugned Government notification be treated as a second reference. Placing strong reliance on the decision of the Hon"ble Supreme Court in the case of The State of Bihar Vs. D.N. Ganguly and Others, he prays for dismissal of the writ appeal.

11. The rival submissions have received the due and anxious consideration of the Court.

12. To arrive at a just decision, the final conclusions of the learned Single Judge may be briefly summarized, which are as follows:

1. Passing of no dispute award may not amount to specific determination of the dispute referred but nevertheless, it has to be construed as an award within the meaning of Section 2(b) of the Act.

2. Since the reference stood concluded with the passing of the award on 21-05-1987 which attained finality by its subsequent publication u/s 17 and by application of Section 17A of the Act, the order of the Government for revival of the reference was beyond its jurisdiction.

3. Since the reference stood concluded with the passing of the award and attained finality by its subsequent publication and by application of Section 17A of the Act, making of a second reference on the same dispute is not permissible.

4. The Labour Court had become functus officio after passing of the award on 21-05-1987 and, therefore, there was no legal justification for passing the order dated 06-12-2005 declaring that the reference would be adjudicated afresh on the strength of the Government order for revival of the reference.

5. The workmen were not vigilant about their dispute. The award dated 21-05-1987 remained undisturbed for nearly 17 years till the Government ordered for revival on 11-10-2004. The explanation for the delay was considered not satisfactory.

13. Since the finding Nos. 1 to 4 are interrelated, those are taken up for consideration together. Section 2(b) of the Act defines "award", which means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court etc. and includes an arbitration award made u/s 10A of the Act. A reading of the aforesaid definition would indicate that firstly, there must be an industrial dispute and secondly, there has to be a determination of such industrial dispute or of any question relating thereto, either as an interim measure or in final form. The crucial word here is

determination. In the context of the definition adverted to above, according to our understanding, it would mean or imply a decision on the dispute after considering the facts. This view finds support from Section 10(8) of the Act. Section 10 of the Act provides for making of a reference which we will deal with separately in the later part of this judgment. For the present purpose, we may indicate that under the said provision, no pending proceeding before a Labour Court or Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of the workman and even when the workman dies, the proceeding should be completed and the award submitted to the appropriate Government.

14. In this connection, Rule 22 of the Industrial Disputes (Central) Rules, ("Rules" hereafter) may also be looked into. Rule 22 provides that if without sufficient cause being shown, any party to a proceeding before the Labour Court etc. fails to attend or to be represented, the Labour Court etc. may proceed as if the party had duly attended or had been represented. In other words, in such a situation the reference before the Labour Court is to proceed, albeit *ex parte*. A conjoint reading of the aforesaid provisions clearly indicates that the industrial dispute which is the subject matter of the reference is required to be adjudicated upon even in the absence of the parties and such adjudication must be on merit.

15. The Karnataka High Court has consistently taken the view that the rejection of reference for default of the workman cannot be called an "award" within the meaning of Section 2(b) of the Act *N.M. Naik Vs. The Presiding Officer, Labour Court, Hubli and Another*, The Calcutta High Court *Madhusudan Konar Vs. State of West Bengal and Others*, taking a similar view, has held that as "no dispute award" is passed without determination of an industrial dispute or of any question relating thereto., such award cannot have existence in the eye of law. Similar is the view of the Bombay High Court and the Andhra Pradesh High Court *The Maharana Mills Kamdar Union and Others Vs. N.L. Vyas and Another*,

16. The Hon"ble Supreme Court in the case of *M/s. Cox and Kings (supra)* has held that in order to be an award within the meaning of Section 2(b) of the Act, the determination must be an adjudication of the issue referred and such adjudication must be one on merits. Paragraph 26 of the said judgment, which is relevant, reads as follows:--

26. Sub-section (1) of Section 10 indicates when and what matters can be referred to the Labour Court for adjudication. The sub-section expressly makes formation of opinion by the appropriate Government that any industrial dispute exists or is apprehended" a condition precedent to the exercise of the power of making a Reference. Sub-section (4) gives a mandate to the Labour Court to confine its adjudication to those points of dispute which have been specified in the Order of Reference, or are incidental thereto. From a conjoint reading of Cl. (b) of Section 2 and sub-sections (1) and (4) of Section 10, it is clear that in order to be an "award" within the second part of the definition, a determination must be--

- (i) an adjudication of a question or point relating to an industrial dispute which has been specified in the Order of Reference or is incidental thereto, and
- (ii) such adjudication must be one on merits.

17. In the said judgment, the view taken by the Allahabad High Court that the finding of the Labour Court that the matter referred to it was not an industrial dispute was itself a determination of the question referred and would fall within the definition of the term "award" under the Act was not accepted by the Hon"ble Supreme Court, holding the same to be not a correct statement of the law on the point.

18. Therefore, the preponderance of judicial opinion and the authoritative pronouncement of the Hon"ble Supreme Court makes it abundantly clear that to be an award within the meaning of Section 2(b) of the Act, there must be an adjudication of the industrial dispute referred on merits, even though it may be an *exparte* one.

19. In view of what has been discussed above, we are unable to veer around to the view expressed and the conclusion reached by the learned Single Judge that the order of the Labour Court dated 21-05-1987 is an award within the meaning of Section 2(b) of the Act and that the reference made on 28-10-1986 stood concluded by passing of such award, thereafter by its publication u/s 17 and by application of Section 17A of the Act. When it is not an award, the question of it becoming final or conclusive by application of Sections 17 and 17A of the Act does not arise.

20. In *Virendra Bhandari* (supra), the Apex Court has held that when there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the appropriate Government, such a matter can be referred u/s 10 of the Act. This is what the Apex Court said in paragraph 4 of the said judgment:--

4. A perusal of the award made on the earlier occasion will clearly indicate that there is no adjudication of the dispute at all. All that was stated was that the parties concerned had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the issue referred to it, not that the dispute itself does not exist. When there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government such a matter can be referred u/s 10 of the Industrial Disputes Act. What is to be borne in mind in proceedings of this nature is that the industrial disputes are referred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. That aspect seemed to have been lost sight of by the Tribunal on the first occasion and by the High Court in the order under appeal. In this background, it was certainly permissible for the Government to have made the second reference on which occasion after inquiring into the mater,

the Tribunal adjudicated the matter finally.

21. In the instant case, the appropriate Government was of the opinion that the industrial dispute earlier referred still exists and therefore called for its revival. When a reference is made by the appropriate Government, there is always the presumption that the industrial dispute exists or is apprehended. When such a reference is not adjudicated upon on merits, there is no award in the eye of law notwithstanding "disposal" of the reference by passing a "no dispute award" and publication of the same. Therefore, in such a situation, there would be no bar for the appropriate Government either to seek a revival of the reference or to make a second reference. When the industrial dispute remains open for adjudication, the question of the Labour Court becoming functus officio does not arise.

22. The learned counsel for the respondent management has pressed into service the decision of the Hon''ble Supreme Court in the case of State of Bihar (supra) in support of his argument that the reference proceeding would be deemed to have concluded on the day on which the award made by the Labour Court becomes enforceable u/s 17A of the Act and that thereafter it would not be open for the appropriate Government to make a second reference on the same set of facts or to seek reopening of the concluded reference. It may be mentioned that the question which fell for consideration before the Hon''ble Supreme Court in that case was where an industrial dispute has been referred to a tribunal for adjudication by the appropriate Government, can the said Government supersede the said reference pending adjudication before the tribunal. In that context, the Hon''ble Supreme Court held that no such power to cancel or supersede a reference is vested in the appropriate Government. However, the question as to whether a "no dispute award" passed by the tribunal or the Labour Court is really an award within the meaning of Section 2(b) of the Act and in a situation where a "no dispute award" has been passed, whether the appropriate Government can seek revival of the reference or make a second reference on the same subject matter did not come up for consideration before the Apex Court. Therefore, the reliance placed by the learned counsel for the respondent management on this judgment is misplaced and the argument so advanced cannot be accepted.

23. For all the aforesaid reasons, we are unable to accept the finding Nos. 1 to 4 of the learned Single Judge and those are hereby set-aside.

24. That brings us to the question of delay relatable to which is the finding No. 5 arrived at by the learned Single Judge.

25. Section 10 of the Act provides for making a reference of industrial disputes to a Board of Conciliation, Labour Court or Industrial Tribunal. To be more specific, Section 10(1)(c) says that where the appropriate Government is of the opinion that any industrial dispute's apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Labour Court for adjudication. A careful reading of the said provision

would show that no period of limitation has been prescribed for making a reference u/s 10 of Act. The phrase "at any time" appearing in that section is correlatable to the existence or apprehension of an industrial dispute in the opinion of the appropriate Government. Therefore, as long as in the opinion of the appropriate Government, an industrial dispute exists or is apprehended, it would be within the competence of the appropriate Government to make a reference u/s 10 of the Act.

26. The primary focus of the said section or rather of the Act as a whole is the existence or apprehension of an industrial dispute, which is the sine qua non for making the reference, without any limitation of time. Therefore, the legislature has purposefully used the words "at any time" which would mean that as long as an industrial dispute exists or is apprehended, the referral order can be made.

27. In *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, while re-stating the objective of the Act, the Hon'ble Supreme Court held that the provisions of the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. This is what their lordships held in paragraph 10 of the said judgment --

...The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. (emphasis is ours). Even in a case where the delay is shown to be existing, the tribunal, labour Court or board, dealing with the case can appropriately mould the relief.

28. It was a case where the High Court had interfered with the award of the Labour Court directing reinstatement on the ground that the workman was not entitled to any relief as he had allegedly slept over the matter for 7 years.

29. In the case of *Sapan Kumar Pandit (supra)*, heavily relied upon by the learned counsel for the appellant, the concerned workman was terminated from service on 17-07-1975 and the reference was made by the State Government on 29-03-1993, that is after 18 years. The order of reference was quashed by the Allahabad High Court on the ground that the delay was so inordinate that the dispute had ceased to exist by afflux of time. Considering the version put forward by the workman, the Apex Court held as under:--

8. The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and re-kindled by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent

evidence in this sub-section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

9. Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication ? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the government. If the government decides to make the reference there is a presumption that in the opinion of the government there existed such a dispute.

30. In the present case, since there was no resolution of the industrial dispute on merits, therefore, the appropriate Government took the view that the reference should be revived for a decision on merits. As pointed out by the Hon'ble Supreme Court, when a reference is made, there is a presumption that in the opinion of the Government there existed such a dispute. Such presumption stood fortified by the finding of the jurisdictional fact arrived at by the learned Labour Court that the referred industrial dispute exists and should be adjudicated upon on merits.

31. Learned Single judge is right in observing that industrial disputes are not expected to linger indefinitely and should be concluded within reasonable time and that stale and belated claims should not be entertained. But at the same time, it must be borne in mind that under the scheme of the Act, the primary focus is on the existence or apprehension of the industrial dispute. Once this primary jurisdictional fact is ascertained/decided in the affirmative, the delay, if any, in making the reference or in seeking to revive the reference or in making the second reference (when the reference was earlier not adjudicated on merits) becomes immaterial. The question of delay and the effect of such delay on the adjudication of the industrial dispute or the prejudice caused to either of the parties on account of the delay are matters to be gone into by the Labour Court

at the time of adjudication of the industrial dispute. But this could not be the ground for aborting the reference proceeding on the hypothetical assumption that it would result in non-availability of relevant witness. As pointed out above, that is a matter for the adjudicatory authority to decide.

32. When the appropriate Government is of the view that the industrial dispute exists and should be decided on merits, which presumption stood fortified by the decision of the learned Labour Court, it would not be proper for the writ Court to step in and prevent the Labour Court from adjudicating on it on the assumption that because of delay the industrial dispute has ceased to exist. Had the appropriate Government declined to make the revival order on the ground of delay or the learned Labour Court declined to adjudicate on the reference on the ground that because of the delay, the industrial dispute has ceased to exist, the matter would have been altogether different. But that is not the case here.

33. The fight between the workman and the management is a fight of unequals. The Act seeks to rectify the situation by putting the two on equal footing. The object of the Act, as has been noticed above, is not only confined to the resolution of the dispute between the two warring groups but to achieve industrial peace and harmony which will result in increased industrial productivity and in the ultimate analysis lead to prosperity of the country. The Act is a social piece of legislation intended to safeguard the interest of the vulnerable workman but at the same time to ensure that there is no dislocation in the industry where the labour is also an equally important stake holder. Keeping the above in mind, the version of the workmen explaining the delay needs to be considered and appears to us to be a plausible one. The dismissed workmen belong to the tea tribe community which is one of the most marginalized sections of the society. Their appalling living condition is well documented and needs no reiteration. For them it is a daily grind for survival. In this case, they were initially represented by the proforma respondent which badly let them down. In the meanwhile, they were defending themselves in the related criminal case from which they were ultimately acquitted in 1998. But their acquittal did not help them to get back their jobs when they realized what had happened before the Labour Court. It was at that stage that the appellant union stepped in and filed the writ petition in the year 2000.

34. No doubt there is delay. But when the appropriate Government is of the opinion that the industrial dispute exists, when the learned Labour Court has recorded a finding of jurisdictional fact that the Industrial dispute exists and should be adjudicated upon and when the workmen have asserted that the industrial dispute exists, there would be no justification to assume that because of the delay, the industrial dispute has ceased to exist.

35. In view of the above, the finding No. 5 of the learned Single Judge is interfered with.

36. Consequently, the judgment and order of the learned Single Judge dated

04-05-2010 is hereby set aside. The learned Labour Court, Dibrugarh shall now proceed with the adjudication of Reference Case No. 13/1986 with utmost expedition and complete the same preferably within a period of 4 months from the date of appearance of the parties. The parties shall appear before the learned Labour Court on 21-05-2012 for necessary orders. No cost.