
(1971) 08 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 466 of 1969

The State of Bihar

APPELLANT

Vs

Nathuni Pandey and Others

RESPONDENT

Date of Decision : 27-08-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Industrial Disputes Act, 1947 — Section 10A, 10A(1), 10A(2), 10A(3)

Citation : (1971) PLJR 652

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : Lal Narain Sinha, A.G. and Tara Kant Jha, No. 2, for the Appellant;
Ramji Sharan and Sadhu Sharan Sahay, for the Respondent

Final Decision : Allowed

Judgement

S.N.P. Singh, J.—This writ application under Article 226 of the Constitution has been filed by the State of Bihar through the Chief Administrator, River Valley Projects Department, and a prayer has been made to quash the award (Annexure 5) given by Sri I. Prasad, who was appointed Arbitrator u/s 10A of the Industrial Disputes Act, 1947, hereinafter to be called "the Act", on behalf of River Valley Projects Department, Kosi Project, Birpur, and Kosi Project Workers" Association, Bhimnagar. Nathuni Pandey (opposite party no. 1) was working as a Senior Mechanic in the Bharda Division of the Barrage Circle, Kosi Project, Birpur. On the ground that opposite party no. 1 was suspected of having taken part in communal activities, he was transferred from Bharda Division, Kosi Project, Birpur, to Sone Barrage Project, Indrapuri by River Valley Projects Department Wireless Message No. 3733 dated the 6th November, 1967, and was asked to join there without availing joining time. A copy of the said message has been made Annexure "2" to this writ application. It appears that a number of telegrams and letters were sent to the Government by Kosi Project Workers" Union for cancellation of the transfer order on the ground that opposite party no. 1 was one of the office bearers of the Kosi Project Workers" Association,

Bhimnagar. It was also alleged that Nathuni Pandey had been transferred in a wrongful manner to cut down the activities of the Association affiliated to the Indian National Trade Union Congress. The Labour Department of the Government of Bihar on receipt of the information from the Labour Union sources considered the dispute to be an industrial dispute between the Management of Kosi Project Workers' Association, Birpur, and their workmen represented by the Kosi Project Association, Bhimnagar (Saharsa), and a notice to that effect was given by Sri B. Singh, Deputy Commissioner of Labour and Conciliation Officer, Patna, intimating that he would hold conciliation proceedings. A conciliation proceeding was actually held on 27.11.1967 and 1.12.1967. Ultimately an agreement was purported to have been made in Form "C" prescribed under the Industrial Disputes (Bihar) Rules, 1961, hereinafter to be referred to as "the Bihar Rules", to refer to Sri I. Prasad, Commissioner of Labour, Bihar, the following dispute for arbitration:

Whether Sri Nathuni Pandey, Senior Mechanic of Kosi Project is an Office-bearer of Kosi Project Workers' Association and whether his transfer is justified?

The said agreement was published by the Bihar Government by notification dated the 11th of December, 1967. The sole Arbitrator allowed the parties to file statements and to produce oral, and documentary evidence in support of their respective claims. The Arbitrator took the view that the question as to whether Sri Nathuni Pandey was an office bearer of Kosi Project Workers' Association or not cannot be a subject-matter of industrial dispute and as such cannot be a subject-matter of arbitration within the meaning of the Industrial Disputes Act, 1947. He further observed as follows:

Further, it appears from the memorandum as well as the evidence produced by the management that one Jairam Singh also claimed to be an office-bearer of this Association and had passed a vote of no confidence on Sri Nathuni Pandey. Sri Jairam Singh, however, is not a party to this arbitration. As such it will neither be within my jurisdiction nor will, it be justified for me to give any decision on this point.

The Arbitrator further took the view that there was lack of evidence to show the complicity of Sri Nathuni Pandey in communal activities. He accordingly held that the transfer of Sri Pandey was not justified. The award of the Arbitrator was duly published in the Bihar Gazette in its issue dated the 24th of February, 1969. The present writ application was filed by the State of Bihar after the publication of the award.

2. The learned Advocate General challenged the validity of the award on three grounds. In the first place, he submitted that there was no valid agreement to refer the dispute to arbitration of the agreement was not executed in accordance with the mandatory provisions of Section 10A(2) of the Act read with Rule 8 of the Bihar Rules. Secondly he submitted that the reference was incompetent as the agreement to refer the dispute to arbitration was made in contravention of

Article 299 of the Constitution. Lastly, he urged that the Arbitrator had no jurisdiction to dissect the terms of the reference and to decide one part of the reference only.

3. I will deal with the first ground, which has been urged by the learned Advocate General in support of his contention that the award given by the Arbitrator is invalid. As laid down in Section 10A(1) of the Act, where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may by a written agreement refer the dispute to arbitration of such person as may be specified in the arbitration agreement. Section 10A(2) of the Act provides that an arbitration agreement shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed. Rules 7 and 8 of the Bihar Rules are the relevant rules relating to arbitration agreement. Rule 7 provides that an arbitration agreement for the reference of an industrial dispute to an Arbitrator shall be made in Form "C" and shall be delivered personally or forwarded by registered post in duplicate to the Secretary to the Government of Bihar in the Labour Department with copies to the Labour Commissioner, Bihar, and the Conciliation Officer. It also provides that the agreement shall be accompanied by the consent, in writing of the arbitrator. Rule 8 provides as follows:

The arbitration agreement shall be signed--

(a) in the case of an employer, by the employer himself, or when the employer is an incorporated company or other body corporate, by the Agent, Manager, or other Principal Officer of the Corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

It will appear from Clause (b) of Rule 8 that the arbitration agreement has to be signed on behalf of the workmen either by the President and Secretary of a trade union of the workmen or by five representatives of the workmen duly authorised in that behalf at a meeting of the workmen held for the purpose. The arbitration agreement which was executed in Form "C" has been made Annexure "4" to the writ application. It appears from Annexure 4 that only Satyapal Mishra, President, Kosi Project Workers' Association, signed for the workmen. The contention of the learned Advocate General is that the mandatory provisions of Section 10A(2) of the Act read with Rule 8 of the Bihar Rules were not complied with and as such there was no valid agreement to refer the dispute to arbitration. Learned counsel appearing for opposite party nos. 1 and 3 urged that the rule that the agreement has to be signed both by the President and Secretary is not mandatory but only directory and there was substantial compliance with the requirement of the rule when one of them, namely, the President of the Kosi Project Workers' Association signed the agreement. It is difficult to accept the contention which has been raised on behalf of opposite party nos. 1 and 3. If one

compares Clause (b) of Rule 8, which relates to attestation of arbitration agreement in the case of workmen, with Clause (b) of Rule 4, which relates to attestation of application under Sub-section (2) of Section 10A of the Act in the case of workmen, for the reference of an industrial dispute, one will notice the difference between the two rules. Clause (b) of Rule 4 provides that in the case of workmen the application and the statement accompanying it shall be signed either by the President or Secretary of Trade Union of the workmen, or by five representatives of the workmen duly authorised in that behalf at a meeting of the workmen held for the purpose whereas Rule 8(b) provides that the attestation of arbitration agreement shall be signed by "the President and Secretary of a Trade Union of the workmen or by five representatives of the workmen....." The rule-making authorities were conscious of the distinction and they intentionally made provision in Clause (b) of Rule 8 that the arbitration agreement should be signed both by the President and Secretary of a Trade Union of the workmen. On a plain reading of Rule 8(b) it is clear that the provision relating to the attestation on behalf of the workmen both by the President and Secretary of a Trade Union is mandatory. Learned counsel appearing for opposite party nos. 1 and 3 in course of his argument referred to a decision of the Punjab High Court in the case of (1) Faridabad Glass Works (P.) Ltd. Vs. Presiding Officer, Industrial Tribunal, Punjab and Others, . In that case there was an objection with regard to the arbitration agreement on the ground that it had not been signed by the President of the Union but only by the General Secretary of the Union representing the workmen. In that case no award had been given by the Arbitrator in pursuance of the agreement. Dealing with the objection with regard to the arbitration agreement having not been signed by the President of the Union, the learned Judge expressed the view that the mistake appeared to be a bona fide one and it could be rectified even then and after the rectification of the mistake the Government should publish the arbitration agreement in accordance with the provisions of Section 10A(3) of the Act. In that Punjab case, which has been cited by learned counsel appearing for opposite party nos. 1 and 3, it has nowhere been observed or held that the provision that the arbitration agreement should be signed both by the President and Secretary of the Union is only directory and not mandatory. In the Punjab case the mistake was detected before the arbitration agreement was published and before the award was given by the Arbitrator. In that view of the matter, the mistake could be rectified. In the instant case, however, the position is quite different. The mandatory provision of Rule 8(b) of the Bihar Rules having not been complied with, there was no valid agreement to refer the dispute to arbitration of the Labour Commissioner, Bihar. An Arbitrator nominated u/s 10A(1) of the Act gets jurisdiction to decide the dispute only when there is a valid agreement to refer the dispute. If the agreement, for any reason, is not a valid one, in that case the Arbitrator will have no jurisdiction to decide the dispute. If in pursuance of an invalid agreement an award is given by the Arbitrator, it will not be a valid award in the eye of law.

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4. For the reasons stated above, it must be held that the award (Annexure 5) which was given by the Labour Commissioner (opposite party no. 2) is invalid and inoperative in law. The application must, therefore, succeed on the first ground urged by the learned Advocate General in support of his contention that the award is invalid. It is not necessary to deal with the other two grounds on which the validity of the award has been challenged. In the result, the application is allowed and the award (Annexure 5) is quashed by a writ in the nature of certiorari. There will be no order as to costs.

Kanhaiyaji, J.

I agree.