

(2004) 07 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 1637 of 2003

United Labour Union

APPELLANT

Vs

Air India Ltd. and Others

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2004) 6 BomCR 121 : (2004) 104 FLR 1014 : (2005) 1 LLJ 514 : (2005) 1 MhLj 475

Hon'ble Judges : S.R. Sathe, J;F.I. Rebello, J

Bench : Division Bench

Advocate : K.K. Singhvi and Susheel Mahadeshwar, for the Appellant; C.U. Singh and J. Saluja, instructed by M.V. Kini and Co. for Respondent No. 1, Suresh Kumar and D.A. Dube for Respondent Nos. 3 and 4, for the Respondent

Judgement

F.I. Rebello, J.—Rule. Heard forthwith.

2. The petitioner Union, seeking to represent, the workers working in the canteen known as Dining Facilities Center at Air India Building, Nariman Point, have challenged the order of the Appropriate Government i.e. Central Government dated 5th June, 2003 rejecting their claim for reference in terms of the Charter of Demands served by them on respondent No. 1 management.

3. A few facts may be set out as they will be essential for the purpose of deciding the controversy. The workmen earlier represented by Bharatiya Kamgar Sena had filed a Writ Petition before this Court bearing No. 96 of 1992 wherein they had sought the following reliefs :-

(1) Direction to Air India to treat the workmen employed in the Dining Facilities Center as their own workmen;

(2) Direction to pay the workmen the wages paid to the lowest category of employees in Air India. When the petition came up for hearing a learned Division Bench of this Court by order dated 11th February, 1992 was pleased to dismiss

the petition. Subsequent to that judgment the Bharatiya Kamgar Sena on behalf of the workmen now represented by the petitioner union entered into a settlement with respondent No. 2 which was signed u/s 12(3) read with Section 18(3) of the I.D. Act to be effective for a period of 5 years commencing from 16th November, 1992 and expiring on 15th November, 1997. By the said settlement the pay scale was revised and some other benefits were granted to the workmen.

In the subsequent charter of demands served by the Bharatiya Kamgar Sena on the management of respondent No. 2, one of the demands as raised was demand No. 13 which read as under :-

"Absorption of DFC Employees in Air India :

The DFC Unit is fully subsidised by Air India and DFC is not treated by HCI as separate unit. It also operates on "NO LOSS NO PROFIT" BASIS. It is therefore demanded that the management should initiate dialogue with the Air India and explore the possibility of DFC employees getting absorbed in Air India."

The Charter of Demand resulted in settlement under Sections 12(3) and 18(3) of the Industrial Disputes Act, 1947. The settlement was for the period from 11th November, 1997 upto 31st December, 2001 and to remain in force thereafter until such time the same is terminated by either of the parties. Insofar as Demand No. 13 is concerned, the Union agreed that other demands mentioned in the Charter of Demand other than those covered by the Settlement are withdrawn and dropped.

The said settlements continues till date and has not been terminated.

4. The individual workmen then filed a petition being Writ Petition No. 2733 of 2001. By that petition the petitioners prayed, that the appropriate Government be directed to refer the Industrial disputes as raised by them to the Industrial Tribunal. The dispute as raised by them included the following demands :-

- (1) Whether the workers are the direct and permanent employees of Air India.
- (2) What are the wages and other benefits to which the workers are entitled to. That petition was dismissed as withdrawn by order of 11th June, 2002.

5. The petitioner Union thereafter raised a demand on respondent No. 1 by letter of 20th June, 2002. The matter was thereafter taken up with the Commissioner for Labour (Central) by letter of 26th June, 2002. A statement of justification was filed on 18th July, 2002. In paragraph 2 thereto, the petitioners set out that the workers are employed in the Canteen maintained by the Air India for its employees at its Head Office at Air India building, Nariman Point, Mumbai. The said canteen is known as the Dining Facilities Center. The respondent No. 1 management filed their reply, setting out partly what is set out in the earlier part of this judgment and further setting out that the workers were all appointed by respondent No. 2 and were issued written appointment orders by H.C.I, and

were thereafter confirmed in writing on different dates by HCI. It was also pointed out that the service conditions of the petitioners were at all times governed and regulated by HCI alone. Recruitment, selection and appointments were made by HCI. The wages/salary levels were fixed by HCI in negotiations with the trade unions representing HCI's workmen. Leave applications were made to and granted by the HCI. Employee loans and advances were taken from the HCI. Supervision and control was entirely exercised by the managers of the HCI and every other aspect of service and employment was governed by the HCI in accordance with their Rules, Regulations and Standing Orders as applicable. In the additional reply filed on 20th September, 2002 it was set out that Dining Facility Center at Air India Building, Nariman Point is extending dining facility provided by the Hotel Corporation of India to the employees of Air-India as well as Indian Airlines.

6. The Conciliation Officer by letter of November 20, 2002 submitted a failure report. In the failure report the Conciliation Officer has recorded that the respondent No. 1 had submitted that the respondent No. 2 is a subsidiary company of Air India. Consequent upon the submission of the Failure Report the Appropriate Government by order of 5th June, 2003 declined to make reference. A loose English translation of the order which is in Hindi has been annexed. Apart from setting out some other things it is set out that there is no dispute in existence. It is this order which is the subject matter of the present petition.

7. At the hearing of the petition on behalf of the petitioner it is contended that the Appropriate Government considering that there was industrial dispute could not have rejected the demand for reference as made by the petitioners herein. It is further submitted that there was sufficient documentary evidence on record to establish the relationship between the workers represented by the petitioner union and respondent No. 1. The issue whether the workmen of the petitioner are the employees of the respondent No. 1 cannot be decided based on the earlier proceedings before this Court as that is an issue which can be decided on evidence by the Industrial Court and could not have been foreclosed by the Appropriate Government. Learned Counsel has taken us to the Exhibits which are annexed to the petition which show that the respondent No. 1 had issued various orders in respect of running of the canteen as also in respect of the employees. It is also pointed out by the learned Counsel for the petitioner that in the order itself, the Appropriate Government has purported to hold that it is the Hotel Corporation of India which owns the Dining Facilities Center in Air India Building. It is pointed out that it is clearly incorrect, as it was not open to the Appropriate Government to so hold.

On the other hand on behalf of the respondent No. 1 their learned Counsel contends that the order of reference is an administrative order based on the subjective satisfaction of the Appropriate Government. It is not open to this Court in exercise of its jurisdiction under Articles 226 and 227 to go into the reasons for refusal. At the highest what could be examined was non-

consideration of material. It was always open to the Appropriate Government to consider prima facie whether there was an industrial dispute. It is then contended that the very issue was the subject matter of a demand raised by the Bharatiya Kamgar Sena, the Union representing the employees. At the time of signing of the settlement the demand was given up and as such it is not open to the petitioner union to now raise the demand. Finally, it is contended that the settlement is in force and during the pendency of the settlement there can be no industrial dispute in respect of a subject matter which is already covered by the settlement.

8. After having heard the learned Counsel, the question is whether this Court ought to interfere with the order of the Appropriate Government made u/s 12(5) of the Industrial Disputes Act, 1947.

The law in the matter of reference by the Appropriate Government in our opinion is well settled and we may gainfully reproduce what has been set out by the Apex Court in the case of *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, :-

"The law on the point may briefly be summarized as follows :-

1. The appropriate Government would not be justified in making a reference u/s 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference.
2. The order of the appropriate Government making a reference u/s 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;
3. An order made by the appropriate government u/s 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.
4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;
5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

Relying on the judgment of *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, it was sought to be pointed out that long delay in making the demand by itself should disentitle the petitioner to any reference. Learned Counsel for the petitioner sought to distinguish the said Judgment. The reference in that case had been made after considerable delay. That was challenged. The Apex Court

while examining the matter and the nature of interference by the Court has observed as under :-

"An administrative order which does not take into consideration statutory requirements or travels outside that it is certainly subject to judicial review limited though it might be. High Court can exercise its powers under Article 226 of the Constitution to consider the question of very jurisdiction of the Labour Court."

It will be clear from the said observations that the nature and scope of the enquiry and the challenge to a reference is limited. We may now gainfully refer the judgment in the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. 2000 SC 469. There also a reference made by the State of Rajasthan was challenged. While again considering the issue of interference in such a reference the Apex Court noted what the Appropriate Government had to consider while making a reference. The Court observed as under :-

"It is the existence of the industrial dispute which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference."

From the law as declared by the Apex Court, the question would be whether this Court should interfere with the order refusing to make a reference.

9. As pointed out earlier for the appropriate Government to make a reference there must prima facie be an industrial dispute in existence. In the instant case the dispute as raised by the workmen is as to who is their employer. We have earlier set out the material relied upon by the parties not only before the Conciliation Officer but also in the earlier proceedings before this Court as also the settlements. In fact while disposing of the Writ Petition No. 96 of 1992 the Division Bench of this Court had noted as under :-

"Whether such materials are available to form a conclusion of that nature is to be examined by other appropriate authorities. In that view of the matter, we do not propose to probe into the materials which have now been produced before us. We may observe that some of them clearly give a counter indication to the statement and argument put forward by the Counsel for the petitioner. For example, in the course of negotiations on behalf of the workmen, a parity has been claimed for the workers with those who have been employed by the 1st respondent Air India. This assumes that their employment is in an establishment other than one run by the Air India. Needless to add, it is not necessary to give a final verdict on the question, having regard to the contents and form of the declaration sought for in this Writ Petition."

We have reproduced this not for the purpose of arriving at any conclusion, but to point out that it was the stand of the respondent No. 1 at the threshold that there was no relationship of employer and workmen between the petitioner and

the respondent No. 1. The relation of employer and workmen de facto is between the workmen represented by petitioner and respondent No. 2, Settlements have been arrived at on behalf of these workmen with respondent No. 2, one of which is still in force.

Even a demand was made for absorption of these workmen in Air India. That demand which is reflected at Serial No. 13 of the Settlement was given up. It is no doubt true that there are a catena of judgments of the Apex Court which have taken the view that the appropriate Government cannot decide, if issues do arise, whether the dispute partake of an industrial dispute. But considering the first proposition in the case of Ajit Kumar Barat (supra), that the appropriate Government must firstly satisfy itself that there is an industrial dispute. There was material placed before the appropriate Government to arrive at a decision whether there was an industrial dispute. Considering the fact that there are settlements between respondent No. 2 and its workmen now represented by the petitioner union and as the last settlement is still in force, when the workmen gave up the demand for absorption with respondent No. 1 and the other material on record it will not be possible to interfere with the order of the Appropriate Government. The subjective satisfaction based on which the respondent No. 3 held that there was no industrial dispute and consequently not a case for interference, cannot be interfered with.

10. In the light of that we do not find any merit in this petition. Rule discharged. There shall be no order as to costs.