
(1999) 08 AHC CK 0193
In the Allahabad High Court
Case No : Special Appeal No. 516 of 1999

U.P. State Electricity Board and another	APPELLANT
Vs	
Labour Commissioner, U.P. and another	RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10A, 11A, 2
Uttar Pradesh Contract Labour (Regulation and Abolition) Rules, 1975 — Rule 25(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)

Citation : (1999) 3 AWC 2716 : (2000) 1 LLJ 651

Hon'ble Judges : N.K. Mitra, C.J.; S.R. Singh, J

Bench : Division Bench

Advocate : Tarun Agarwala, for the Appellant; Ram Niwas Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Appeal on hand, stems from the Judgment and order dated 14.5.1999 passed by the learned single Judge dismissing the writ petition filed by the petitioner the challenge in which was focussed on the order dated 26.10.1998 passed by the Labour Commissioner, U. P., Kanpur in exercise of the power conferred by the proviso to Rule 25 (2) (u) (a) of the U. P. Contract Labour (Regulation and Abolition) Rules, 1975.

2. At the very threshold, Sri Ram Niwas Singh, learned counsel appearing for the second respondent made a preliminary submission stating that the appeal under Chapter V11I ; Rule 5 of the Rules of Court was not maintainable. The quintessence of his submission is that the Labour Commissioner while exercising the power under Proviso to Rule 25 (2) (u) acts as Tribunal" and, therefore, the judgment and order of the learned single Judge made in the writ petition wherein the order of the Labour Commissioner (Tribunal) was under challenge, would not be appealable. Sri Tarun Agarwal, learned counsel appearing for the appellants

repudiated the submission made by Sri Ram Niwas Singh and urged in opposition that the Labour Commissioner could not be equated with Tribunal within the meaning of Rule 5 of Chapter VIII of the Rules of Court. For proper analytical approach to the question as to the maintainability of the appeal, it would be essential to have a bird's eye-view of the relevant provisions. Rule 5 of the Chapter VIII of the Rules of Court is excerpted below :

"5. Special appeal.--An appeal shall lie to the Court from a Judgment (not being a Judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal Jurisdiction for in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a Tribunal. Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act. with respect to any of the matters enumerated in the State List or the concurrent list in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.)

Rule 25 (2) (v) (a) of the U. P. Contract Labour (Regulation and Abolition) Rules, 1957 reads as under :

(v) (a) in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work :

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Labour Commissioner. U. P. whose decision shall be final" :

It would be apposite to quip here that Rule 25 (2) (v) (a) of the U. P. Contract Labour (Regulation and Abolition) Rules, 1975, is in part material with the corresponding provisions in the Contract Labour (Regulation and Abolition) Central Rules, 1971 with the only distinguishing feature that there, the power under the proviso is conferred upon the Chief Labour Commissioner and the expression "whose decision shall be final" has been omitted by G.S.R. 871 (E) dated 26.11.1985 1986 III CCL 102 . The word Tribunal" has not been defined in the Rules of the Court. The dictionary meaning of the word Tribunal" is : "the seat of a Judge", and in that sense, the term would include "Courts of law". However, the words Tribunal" and "Court" are used in Rule 5 of Chapter VIII, as they are in Article 136 of the Constitution in juxtaposition with each other to

mean two similar things but not the same things. The word Tribunal" means quasi-Judicial tribunals other than ordinary Courts, which bear some "trappings of a Court". All Courts are Tribunal" but all Tribunals" are not necessarily "Courts". As held by the Supreme Court in Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, . a body which determines controversies or the rights of the parties is called the Tribunal" "when it possesses some but not all the trappings of a Court". The broad features, which characterise the "Court", may be delineated as thus : (a) The Court is the part of hierarchy of Tribunals set up by State under its constitution in exercise of the judicial power of the State, i.e., the power to decide Controversies between its subjects or between it and its subjects to uphold the rights and to punish wrongs : (b) it must be recognised by the law as a Court; mere exercise of function in a Judicial manner is not enough : (c) it must exercise the power to decide by reason of the sanction of law and not by the voluntary submission of the parties to us Jurisdiction ; (d) the Court determines the controversy objectively and impartially : (e) the Court is bound by precedent ; the doctrine of res judicata or estoppel by Judgment applies to decisions of Courts, subject to certain conditions. It is a settled proposition of law that it is not possible for a Tribunal to combine in it all the virtues of a Court See D. D. Bone on Administrative Law Chapter XI. It would be evident from the proviso to Rule 25 (2) (v) of the Rules that a particular controversy is statutorily committed to the jurisdiction of the Labour Commissioner "whose decision shall be final". The decision of the Labour Commissioner is judicial rather than administrative, as he has to decide the controversy independently and impartially. Though the Labour Commissioner is not designated as Tribunal" but some of the "trappings of Court" are found in the Labour Commissioner while exercising power under the proviso to Rule 25 (2) (v) of the U. P. Rules.

3. In Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , a three-Judge Bench of the Supreme Court had an occasion to interpret the word "Tribunal" and decide the question as to whether the word includes "Arbitrator" u/s IDA of the industrial Disputes Act. After noticing the definition of the word Tribunal" as delineated in Section 2 (r) of the Act, the Supreme Court held that prima facie Tribunal" "is a different category from arbitrators but all statutory definitions are subject to contextual changes" and went on to hold as under:

"Then what is the natural meaning of the expression Tribunal"? A "Tribunal" literally means a seat of justice. May be, justice is dispensed by a quasi-judicial body, an arbitrator, a commission, a Court or other adjudicatory organ created by the State. All these are Tribunals and naturally the import of the word embraces an arbitration Tribunal."

The Court further observed :

"We have hardly any doubt that Tribunal" simpliciter has a sweeping signification and does not exclude "arbitrator"."

4. in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, , a Five-Judge Bench of Supreme Court adverted itself to examine the purport and meaning of the word Tribunal" occurring in Article 136 of the Constitution. The Supreme Court held that the word "arbitrator" used in Section 11A of the industrial Disputes Act. 1947, did not mean Tribunal" although his decision was quasi-judicial, but having regard to the provisions of the industrial Disputes Act. 1947. "it may perhaps be possible to describe such an arbitrator, as in a loose sense, "statutory arbitrator....." Essential attributes of Tribunal", according to the Supreme Court, are that the body or authority entrusted with the power to decide class of dispute "is clothed with the trappings of a Court" and further that "it should be constituted by the State and should be entrusted with the State's inherent judicial power". These attributes. In out opinion, are very much present in the Labour Commissioner entrusted with the power to decide a class of disputes comprehended by Rule 25 (2) (v) of the Rules referred to above in that the Labour Commissioner derives the power to decide a particular dispute between the parties not on the basis of any agreement but on the basis of statute itself and it can, therefore, be said that the Labour Commissioner is invested with the inherent judicial power of the State to decide the class of dispute referred to in Rule 25 (2) (v) (a) of the Rules.

5. in *Committee of Management v. Dy. Director of Education*, (1996) 3 UPIBEC 1613 a Full Bench of this Court was called upon to decide as to whether the Regional Dy. Director of Education exercising the power u/s 16A (7) of the U. P. Intermediate Education Act, 1921, constitutes a Tribunal" within the meaning of Rule 5 of Chapter VI of the Rules of Court. The Full Bench held that the Regional Dy. Director of Education while exercising powers u/s 16A (7) of the U. P. Intermediate Education Act 1921 "cannot be said to be functioning as Tribunal within the meaning of Rule 5 in Chapter VIII of the Allahabad High Court Rules". The Full Bench was of the view that "for determining the question whether an authority is a Tribunal, the nature of the order passed by the authority and also the characteristic of the body which is called upon to adjudicate upon the matter in dispute are material considerations." The Full Bench noticed that u/s 16A (7), the Regional Dy. Director of Education may find persons who are in actual control of the affairs of an institution and yet those persons might not be recognised as constituting the Committee of Management. The Full Bench also noticed that the decision u/s 16A (7) is subject to decision by the Court and accordingly, it held that the function of the Regional Dy. Director of Education u/s 16A (7) is essentially administrative in character.

6. In the present case, the proviso to Rule 25 (2) (v) (a) of the U. P. Contract Labour (Regulation and Abolition) Rules, 1975 clearly postulates that the decision of the Labour Commissioner shall be final. It is true that in the Central Rule, the expression "whose decision shall be final" occurring in the proviso, has been omitted as already noticed earlier in this judgment but the matter on hand, appears to have cropped up out of an application moved u/s 25 (2) (v) (a) of the

U. P. Contract Labour (Regulation and Abolition) Rules, 1975 as would be evinced from the application moved on behalf of the respondent a copy of which has been annexed as Annexure-2 to the writ petition. The decision of the Labour Commissioner on the question whether the workmen employed by the Contractor, perform the same or similar kind of work as the workmen directly employed by the Principal employer of the Establishment, has been given finality under the proviso to Rule 25 (2) (v) (a) of the U. P. Rules. The finality attached to the decision of the Labour Commissioner, U. P. means that the decision is not appealable nor open to challenge except by means of a writ petition under Article 227 of the Constitution which confers on every High Court the power of superintendence over all Courts and Tribunals throughout its territorial limits. In our opinion, therefore, the Labour Commissioner, U. P. while exercising the power under the proviso to Rule 25 (2) (v) (a) of the U. P. Rules, acts as a Tribunal" and consequently, the judgment under challenge would not be appealable under Chapter VIII. Rule 5 of the Rules of Court.

7. In any case, the Labour Commissioner, for the purpose of the rule, may be treated as "statutory arbitrator" for "a statutory arbitrator", observed Lord Goddard, in *R. v. Disputes Committee of National Joint Council for the Craft of Dental Technician*. (1953) 1 All ER 327 referred" to in *Engineering Mazdoor Sabha* (supra), "is a person to whom, by statute, the parties must resort". The decision of statutory arbitrator may be treated as an award within the meaning of Rule 5 of Chapter VIII of the Rules of Court and by that reckoning also, the appeal under Chapter VIII, Rule 5 would not lie.

8. Assuming that the function of the Labour Commissioner under the proviso to Rule 25 (2) (v) (a) of the Rules has the administrative savour and the Labour Commissioner does not exercise the power thereunder as Tribunal", we are of the considered view that the judgment of the learned single Judge does not commend itself for interference on merits. The learned single Judge has committed no illegality in maintaining the order passed by the Labour Commissioner holding that the workmen on whose behalf application under the proviso to Rule 25 (2) (v) (a) of U. P. Rules was filed, though employed by the Contractor, were performing the same or similar kind of work as the workmen directly employed by the appellant and therefore, the wage rates and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the appellants on the same or similar kind of works.

9. In the conspectus of the above discussion, the appeal fails and is dismissed.