

(1999) 07 DEL CK 0047
In the Delhi High Court
Case No : C.W. No 1563/98

V. Sri Ram and Others

APPELLANT

Vs

Delta Airlines Inc. and Others

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1999) 4 AD 782 : (1999) 80 DLT 503 : (1999) 50 DRJ 465 : (2000) 1 LLJ 414

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Ms. Indira Jaisingh and Ms. Anitha Shenoy, for the Appellant; Mr. Raj Birbal and Ms. Suneet Kaur, for the Respondent

Judgement

Mukul Mudgal, J.

1.the petitioners herein were employed by the respondent No. 1 and consequent to the termination of their services upon the cessation of the operation in Delhi they approached the Conciliation Officer. After proceedings before the Conciliation Officer and his failure report, the petitioners came to this Court by CWP No. 1830/96 as no decision was taken on the reference of the dispute sought to be raised by them. On 12.11.97 this Court directed the Government to take a decision on the reference of the dispute within three weeks.

2. This writ petition is directed against the order dated 27.1.98 passed consequent to the direction of this Court dated 12.11.97 in CWP No. 1830/96 by the Ministry of Labour, Government of India, declining to make a reference of Industrial Disputes on the ground that the entire establishment of the respondent No.1 Delta Airlines has been closed due to economic considerations the retrenchment compensation was paid far in excess of the scales prescribed under the law. It is this refusal to refer the matter for adjudication which has been challenged in this writ petition under Article 226 of the Constitution of India by the petitioners who were the employees of respondent No. 1. On 27th

January, 1998 the following order impugned in the writ petition was passed by the respondent No. 2:-

"I am directed to refer to FOC report No. ALC-HQ/8(41)/95 dated 27.12.95 from ALC(C)-HQ, New Delhi, and to state that the Central Government do not consider this to be a fit case for reference for adjudication due to the following reasons:-

"It is found that the closure has been affected due to economic consideration for which due notice is required under the law has been served to the workman as well as appropriate Government. It is also found that the retrenched workmen has also been paid compensation far in excess of the scales prescribed under the provisions of I.D. Act. Since the entire establishment of Delta Airlines has been closed the question of Violation of provisions of I.D. Act is not applicable to this case. It is also understood that 48 workmen have accepted the final settlement with the management. As such an industrial dispute does not subsist."

3. During the pendency of the disputes several of the employees had settled the matter but the present petitioners have not settled the matter and are pressing for the resolution of the dispute by the Industrial Tribunal. However, it is contended by the respondent that out of 119 erstwhile employees 60 were given employment in other establishments, 12 were transferred and a small number of the employees are still agitating. Efforts were made to settle the matter but since the matter between the present petitioners and the respondent No. 1 was not settled the writ petition was heard on merits. The order of this Court dated 18.2.99 reads as under :-

"Learned counsel for respondent No. 1 states that the Central Government by recording the findings of the facts has held that the entire establishment of the Delta Airlines Inc., has been closed down and the closure has been effected due to economic considerations and Central Government further held that the retrenchment compensation has been paid far in excess of the statutory requirements prescribed under the law. Learned counsel for respondent No. 1 states that in view of these findings of fact recorded by the Central Government, the reference was rightly refused.

List this matter for final hearing on 10.3.99 at the end of the list in "after notice miscellaneous matters".

4. It is evident that the above order has clearly gone into merits of the dispute which is not within the jurisdiction of the authority considering the question of reference. In fact this is the plea of the learned counsel for the respondent No. 1.

5. The learned counsel for the petitioner had relied upon the following judgments in support of plea that it was not open to the respondent No. 1 to delve into the merits of the matter and for the said proposition she has relied upon the following judgments of the Hon"ble Supreme Court, reported as V. Veerarajan and others Vs. Government of Tamil Nadu and others, ; Ram Avtar Sharma and Others Vs. State of Haryana and Another, and Telco Convoy Drivers Mazdoor

Sangh and Another Vs. State of Bihar and Others, . In Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, it has been held as follows:-

"It is true that in considering the question of making a reference u/s 10(1), the government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". as urged by Mr. Shanti Bhushan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus ,the dispute has been decided by the government which is, undoubtedly, not permissible."

6. It has also been held by the Hon"ble Supreme Court in para 13 & 14 of the above said judgment:-

"It is now well settled that, while exercising power u/s 10(1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the list, which would certainly be in excess of the power conferred on it by Section 10 of the Act.

Applying the principle laid down by this Court in the above decisions, there can be no doubt that the government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are work men or not, the same cannot be decided by the government in exercise of its administrative function u/s 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh case, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the government to do so would be to render Section 10 and Section 12(5) of the Act nugatory."

7. The Hon"ble Supreme Court also held that in the facts and circumstances of the case since the State Government had already been given a chance to reconsider the matter the State Government should be directed to make a reference. The Supreme Court observed as follows:-

"After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute

should be adjudicated by the Industrial Tribunal and, as the government has persistently declined to make a reference u/s 10(1) of the Act, we think we should direct the government to make such a reference. In several instances this Court had to direct the government to make a reference u/s 10(1) when the government had declined to make such a reference and this Court was of the view that such a reference should have been made. See *Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another*, ; *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, ; *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, ; *Nirmal Singh Vs. State of Punjab and Others*, ."

8. The other judgments relied upon by the learned counsel for the petitioners are to the same effect. Insofar as the learned counsel for the respondent is concerned, he has relied upon the judgment in case *State of Bombay Vs. K.P. Krishnan and Others*, . In paragraph 12 of the aforesaid judgment the Hon''ble Supreme Court has held as follows:-

"Now, in dealing with such a question relating to a public utility service considerations prescribed by the second proviso to Section 10(1) may be relevant, and Government may be justified in refusing to make a reference if it is satisfied that the notice given is frivolous or vexatious or that reference would be inexpedient."

9. The Hon''ble Supreme Court has also held as follows:-

"Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency."

"But even in dealing with the question as to whether it would be expedient or not to make the reference Government must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. In exercising its power u/s 10(1) it would not be legitimate for the Government for instance to say that it does not like the appearance, behavior or manner of the secretary of the union, or even that it disapproves of the political affiliation of the union, which has sponsored the dispute."

10. The above position, Therefore, does not support the respondent No. 1 and infact supports the petitioners" case. While going into the merits of the matter the Government has taken into consideration facts which are irrelevant for considering the question of reference. None of the circumstances enumerated by the Hon''ble Supreme Court for sustaining a refusal to refer the dispute are present in this case.

11. The learned counsel for respondent No. 1 also relied upon *Hochtief Gammon Vs. State of Orissa and Others*, where the Government of Orissa at the instance

of the workmen referred to adjudication a dispute as to whether the workmen of the contractor was entitled to bonus and the quantum thereof and the contractor made an application to the Government seeking to make the company as a party to the reference and seeking an additional reference by addition of a clause to the reference in the following terms :-

"If bonus is payable who is responsible for payment of bonus to the workmen."

The Hon^{ble} Supreme Court held:-

"The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to Judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts."

12. I fail to see how the above statement of law comes to the aid of the respondent No. 1. In facts it is in favor of the petitioner. Clearly the reasons for refusal given in the impugned order go into the domain of the Industrial Tribunal in adjudication and are thus not facts which are relevant to sustain the refusal to refer the dispute for adjudication.

13. The decision of a Division Bench of this Court in Wings Wear Corporation Vs. Workmen of Wings Wear Corporation, and relied upon by the respondent No. 1 also arose from the order by the appropriate Government to refuse to refer the Industrial Dispute for adjudication for reasons which purported to decide merits of the dispute. It was also argued that after the insertion of the Section 11-A of the Industrial Disputes Act, the decision of the Supreme Court in Ram Avtar and Workman of Syndicate Bank, Madras 1985 Lab. IC 63 can no longer be good law.

14. In para 21 of the judgment of the Division Bench of this Court in Wings Wear (supra), it was held as under:-

"Thus, it is clear that to form an opinion u/s 10(1) read with Section 12(5), the Government has to consider the facts and circumstances relating to the dispute to decide whether an industrial dispute exists and whether it is not expedient to make a reference in a given case. If the Government does not make a reference, it has to record and communicate to the parties concerned its reasons therefore. To do so, the Government will be within its jurisdiction in expressing its prima facie view on the merits also. It is equally clear that the reasons recorded by the

Government should not purport to reach a final decision on any questions of law or on disputed question of fact because adjudication of any dispute would be within the exclusive jurisdiction of a Tribunal or a Court under the Act. If the government purports to do so, it would be said to have acted on extraneous, irrelevant ground or grounds not germane to the termination of the question before it. Refusal by the Government to make a reference is a serious matter as it prevents and excludes adjudication of a dispute. That is why the legislature has enjoined upon the appropriate government a statutory duty to record and communicate to the parties concerned its reasons. Therefore, the reasons must be good. They must indicate reasonable application of mind and consideration of only relevant matters germane to the exercise of power by the Government, otherwise the court will strike it down."

15. In para 24 of the Wings Wear case it was further held:-

"Whenever a view is expressed on the merits of the dispute it is really final, inasmuch as adjudication of that dispute is ruled out irrespective of the magic words being used or not. On the other hand, no fault can be found with reasons which indicate consideration and examination of merits of the dispute, and, in the light thereof, justify refusal to make a reference in a given case where an industrial dispute exists but it may not be expedient or otherwise reasonable to make a reference."

16. In para 34 Wings Wear case it was further held:-

"By the introduction of Section 11-A, the Legislature has not taken away any of the powers of the appropriate Government to give the same to the Tribunal instead. It has only enlarged the scope of the jurisdiction of the Tribunal. The power of the appropriate Government u/s 10(1) and Section 12(5) has not been altered in any manner whatsoever by Section 11-A. Whether it operates prospective or retrospectively is, Therefore, of no consequence for the purposes of the present case."

17. In the light of the above it is very clear that the reasons given by the Government namely the entire establishment of the Delta Airlines has been closed down and the closure has been effected due to economic considerations and the retrenchment compensation paid is far in excess of the statutory requirements are clearly finding on the merits of the dispute and not regarding the expediency which was held by the Division Bench of this court in Wings Wears case as a legal requirement to decline the reference. Furthermore the reason given for declining the reference is based on the question of law and disputed question of fact which have been held to be an extraneous or irrelevant consideration for declining a reference in the Wings Wear case (supra). Accordingly in accordance with the above discussion and in particular the decision of the Supreme Court in Telco Convoy Driver's case(supra), the writ petition is allowed. The order dated 27.1.99 is set aside. Since this matter has been pending for a long time and this is the second time when the workmen

have come to this Court, this is a fit case when this Court should direct the making of reference by the Central Government.

18. Accordingly the writ petition is allowed. The order dated 27.1.99 is set aside and the respondent No. 2 Union of India, is directed to make a reference u/s 10(1) of the Industrial Disputes Act to the Industrial Tribunal within eight weeks from today.