
(1963) 08 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 880 of 1961

Vasudeva Rao (B.K.)

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 07-08-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 12 (5), 33

Citation : (1963) 2 LLJ 717 : (1965) 2 MysLJ 382

Hon'ble Judges : Nittoor Sreenivasa Rau, C.J.;H. Hombe Gowda, J

Bench : Division Bench

Judgement

Nittoor Sreenivasa Rau, C.J.—In this writ petition the petitioner seeks that the order of reference made by respondent 1, the State of Mysore, to respondent 2, the labour court at Hubli, of an industrial dispute between the petitioner, who was the employer as proprietor of Prabhat Talkies, Mangalore, and the workmen of Prabhat Talkies, represented by the secretary, Cinema Mazdoor Sangh, Mangalore, in regard to the retrenchment of the employee (respondent 4). Kesava Devangha, be quashed as also the award by respondent 2, the labour court, on the reference.

2. The reference is attached on the ground that previous to that reference, i.e., under S. 10(1) of the Industrial Disputes Act, 1947, the State Government had, after receiving the report of the conciliation officer in regard to the very dispute, taken a decision to the effect that the dispute did not merit reference for adjudication, that the decision had been communicated to the parties concerned and that, therefore after having made and communicated a decision, Government had ceased to have any further power to reopen the matter and make a reference. The reference is also challenged on the ground of inordinate delay which had resulted in a change in the position of the industry and that the belated reference would result in arbitrary interference with the running of the industry. As regards the award consequent on the reference, it is contended that the award resulting from a reference made without authority could no legal effect.

3. Contentions have also been urged against the award to the effect that the Cinema Mazdoor Sangh could not represent the workmen of the Prabhat Talkies, that the cause of the employee, Keshava Devangha, had not been taken up by a substantial number of workmen of the talkies, that the workmen had ceased to be a member of the union and that the findings to the effect, that the retrenchment of the workmen was not bona fide and was only by way of victimizing him for his trade union activities, were not sustainable on the material on record.

4. As regards the contentions raised in respect of the award itself, they relate in substance to questions of fact. The labour court has found that the Cinema Mazdoor Sangh in the proved circumstances had the right to represent the workmen, that a substantial section of the workmen had espoused the cause of the employee, that the circumstances showed that no retrenchment was really called for that therefore the purported retrenchment was designed by the way of victimizing a troublesome employee. We see nothing in the award to indicate that these conclusions of fact have either no material to support them or that they are totally divorced from the material. Hence, these findings cannot be interfered with within the scope of the present proceedings.

5. As regards the State Government's power to make a reference even after its once coming to the conclusion that the dispute did not merit a reference on a consideration of the report of the conciliation officer, it is urged that, whatever the position might be, when no such prior decision has been taken by Government, the matter assumes a different complexion once such a decision has been taken. It will be noticed that under S. 12(5) the appropriate Government has to record and indicate to the parties concerned its reasons in the event it decides not to make a reference of the dispute to a board, labour Court, tribunal or national tribunal. It is suggested that the decision, therefore, is of a quasi-judicial character and cannot be later on superseded by what would virtually be an arbitrary decision. It is no doubt true that S. 12(5) reads as if it represents the culminating step after the earlier stages contemplated by Ss. 12 to 12(4). But it is now well-settled that the reference contemplated under S. 12(5) does not represent the conferment of an independent power on the State Government to make a reference, but that even such a reference comes under S. 10(1). In other words, it represents only one of the modes or contexts in which the matter may come before the Government for a reference being made under S. 10(1). It is also well-settled that an order of the Government making the reference is an administrative act and not a quasi-judicial one, and that Government is the sole judge in regard to the factual existence of an industrial dispute and of the expediency of a reference.

6. It was laid down by the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, that notwithstanding the fact that the Government has to form an opinion as to the factual existence of an industrial dispute, the making of a reference under S. 10(1) is an administrative act; and this was reiterated by that

Court in *The State of Bihar Vs. D.N. Ganguly and Others*, . In *Radhakrishna Mills v. Madras State* 1956 I Ilj 221, it was held that Government was the sole judge of the factual existence of a dispute and the expediency of a reference. It was also held that a decision under S. 12(5) not to make a reference is an administrative act and not a judicial or quasi-judicial adjudication and such a decision, not having been invested with any statutory finality by any provision of the Act, Government can re-examine the question of expediency and make a reference under S. 10(1) and that consequently the failure to give notice to the management before making the reference did not vitiate the exercise of the statutory power to make the reference vested in Government by S. 10(1). The same view, viz., that an earlier decision by the Government not to make a reference did not operate as *res judicata*, has been taken in *Gurumurthy v. Ramulu* 1958 I Ilj 20 , *L.H. Sugar Factories and Oil Mills (Private) Ltd. Vs. State of Uttar Pradesh and Others*, and *In State of Bombay Vs. K.P. Krishnan and Others*, it has been held that S. 12(5) of the Act does not confer upon Government any power independent of S. 10(1) and that Government may take into consideration other factors than those that have come to its notice under S. 12. It is hardly open to doubt that, as the power under S. 10(1) has been conferred upon Government in the interests of industrial peace, the amplitude of the power cannot be curtailed by the importation of other principles unless there is any warrant for them in the statute itself. It follows that even if at one stage Government had come to the conclusion that no reference is called for in the interests of industrial peace, it may re-examine the matter, whether in the light of fresh material or otherwise, and make a reference if it comes to the conclusion that a reference is justified, in the interest of industrial peace. In the case on hand some material has been placed before us by the respondents to indicate that Government revised its decision not to make a reference in consequence of certain circumstances brought to its notice. It is not necessary to examine them, since it was a matter entirely within the State Government's competence, and there is nothing in the material on record to indicate that there was any lack of bona fides in the Government reviewing the position and deciding to make a reference.

7. As regards the delay in making the reference, either in relation to the origin of the dispute or to the earlier decision not to make a reference, it is no doubt true that more than a year had elapsed. But delay itself does not touch the question of jurisdiction. The only context in which the question of delay may have to be considered would be that of mala fides. There is no material to suggest mala fides on the part of the Government, though undoubtedly there are indications of carelessness; e.g., Government has failed to notice that one of the workmen whose dispute also was referred to the labour court had not only settled his dispute with the management but was dead by the time the reference was made. The affidavits filed on behalf of the State do not indicate why the delay occurred, particularly in regard to the period after the Labour Commissioner sent his communication to the State recommending a reference. Government would have

been well-advised to state the circumstances under which it took such a long time to make the reference. For, while undoubtedly the Government has the power to make a reference in the interests of industrial peace, it also has to bear in mind that the ordered existence of an industry should not be interfered with by inordinate delay in making a reference. However, delay by itself does not give rise to a presumption of mala fides and there is no other material to infer mala fides. The learned advocate for the petitioner relies upon decision in Shalimar Works Limited Vs. Their Workmen, in which it was observed that though there is no limitation prescribed for the reference of disputes to an industrial tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after they have arisen. But no question of the delay in exercise of the power by the concerned authority depriving it of that power arose in that case.

8. The learned advocate for the petitioner also urged that the alleged retrenchment took place when an earlier dispute in a larger context was pending and that such retrenchment was in contravention of S. 33 of the Act as was borne out by the material on record. But this was not a point which came up for consideration at any earlier stage and was not in issue between the parties and cannot be gone into now.

9. In the result, this writ petition is dismissed. In the circumstances of the case there will be no order as to costs.