

(1973) 11 CAL CK 0004
In the Calcutta High Court

West Bengal Press Workers and Employees Union	APPELLANT
Vs	
Eighth Industrial Tribunal and Others	RESPONDENT

Date of Decision : 19-11-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25FFF

Citation : (1974) 2 LLJ 404

Hon'ble Judges : Debi Prosad Pal, J

Bench : Single Bench

Judgement

Debi Prosad Pal, J.—M/s. West Bengal Press Workers and Employees Union (hereinafter referred to as the union) is the petitioner in this application and has challenged an award made by the 8th Industrial Tribunal, West Bengal on a dispute between Messrs. Cardboard Industrial and Printing Co. (hereinafter referred to as the company) and their workmen represented by the union. The dispute which was referred to the Tribunal u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was as follows:

(1) Whether the lock-out of the firm from May 6, 1969 is justified? To what relief, if any, are the workmen entitled ?

(2) Whether the workmen are entitled to wages for the period from October 7, 1968 to October 27, 1968?

At the time of the hearing the company raised a preliminary point that the reference is not legally maintainable as there has been a closure of the factory. The union resisted such a plea on the ground that such a contention falls outside the scope of the reference made by the State Government. The Tribunal on an examination of the material and relevant evidence held inter alia that the closure alleged by the company was a fact and not a pretence. Accordingly the Tribunal negatived the contention of the union that there has been any lock-out. The Tribunal, however, held that the workmen are entitled to compensation as provided in Section 25FFF of the Act. The issue No. 1 was thus disposed of by the

Tribunal. It is not necessary for me to deal with issue No. 2 as no dispute has been raised before me regarding the decision of the Tribunal on that point.

2. Learned Counsel for the petitioner contended that the subject-matter of the reference made u/s 10 of the Act was whether the lock-out of the firm was justified or not. The reference proceeds on the footing that there has been a lock-out. Learned Counsel, therefore, submitted that the Tribunal had no jurisdiction to enlarge the scope of the reference by adjudicating on the question whether there was a closure or not.

3. It is now well settled that when the order of reference specifies the points of dispute for adjudication, the Industrial Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its adjudication to the points of dispute referred to and the matters incidental thereto, *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, . The jurisdiction of the Tribunal being limited to the matters referred to it by the Government, it would have no right to travel outside the reference and cannot arrogate to itself powers which the Legislature has not conferred upon it. But if the dispute referred to the Tribunal is not an "Industrial dispute" at all it will not be governed by the provisions of the Act. In the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, one of the items of dispute specified in the order of reference was whether the strike of the workers and the working journalists from April 27, 1959, and the consequent lock-out by the Management of the Express Newspapers (P.) Ltd. were justified and what reliefs to workers and journalists were entitled, It was contended by the employer that what it had done was a closure and hence the dispute in respect of it cannot be validly referred to for adjudication by an Industrial Tribunal. It was pointed out by the Supreme Court that if the action taken by the appellant is not a lock-out but a closure, bona fide and genuine, the dispute which the respondents may raise, in respect of such a closure is not an industrial dispute at all. On the other hand, if in fact and in substance, it is a lock-out, but the same action has adopted the disguise of a closure and a dispute is raised in respect of such an action, it would be an industrial dispute which the Industrial Tribunal, is competent to deal with. If such a dispute is tried by an Industrial Tribunal, at the very commencement, the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the appellant is a closure or a lock-out. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the appellant amounts to a closure, there would be an end to the proceedings before the Tribunal so far as the main dispute is concerned. The finding which the Tribunal may make on this preliminary issue is really a finding on a jurisdictional fact and it is only when the jurisdictional fact is found against the appellant that the Industrial Tribunal would have jurisdiction to deal with the

merits of the dispute. This case was considered in the later decision of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd v. Their Workmen (supra). The Supreme Court pointed out that the facts in the earlier case of Express Newspaper (P.) Ltd. were very special and the decision was limited to those special facts. In the case of Express Newspapers there was enough material on the record to show that the company had been trying for sometime past to transfer its business elsewhere and the action of the appellant which followed the strike was in fact a closure and not a lock-out. In Delhi Cloth and General Mills Co. Ltd's case (supra) the Supreme Court also held that it is open to the parties to show that the dispute raised was not an industrial dispute at all and it is certainly open to them to bring out before the Tribunal the ramifications of the dispute. If it is open to the parties to show that the dispute referred was not an Industrial dispute, I see no reason why the company cannot raise a preliminary issue that the action of the company amounted to a closure and not a lock-out and hence the Tribunal has no jurisdiction to decide the dispute which is not an industrial dispute. The facts in the present case in my view come closer to the case of Express Newspapers (P.) Ltd. In my view as the case of closure has been specifically pleaded by the company, the Tribunal did not exceed its jurisdiction in deciding the jurisdictional fact viz , whether there was a closure or lock-out, because the jurisdiction of the Tribunal to adjudicate the point of reference will depend upon the decision of this jurisdictional fact.

4. For the reasons stated above the rule is discharged. Interim order, if any, stands vacated. There will be no order as to costs.