
(1962) 01 CAL CK 0003
In the Calcutta High Court

Wolverhampton Iron and Steel Co.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-01-1962

Acts Referred:

Constitution of India, 1950 — Article 223
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10, 33, 33A, 33B, 7

Citation : (1962) 2 LLJ 72

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—Between the petitioner-firm and its workmen a long and protracted labour dispute was going on for some years. In course of that dispute the petitioner-firm dismissed several of its workmen on a charge of going Blow.

2. There was an industrial dispute raised over the dismissal of the workmen. This dispute was referred by the State Government to the first labour court for adjudication, in exercise of its powers u/s 10 of the Industrial Disputes Act (hereinafter referred to as the Act). The notification u/s 10 bears the date 29 Jane 1959. The reference is admittedly a belated reference, late by about three to four years after the respective dates of dismissal.

3. While the dispute was pending before the first labour court, the State Government constituted the sixth and the seventh industrial tribunals, by a notification, dated 11 July 1960, the notification constituting the first labour court was cancelled and later on by a notification dated 25 July 1960, the dispute, which was pending before the first labour court, was transferred (or more properly again referred) to the seventh industrial tribunal, after super session of the previous reference. The notification, dated 25 July 1960, is set out below:

Whereas an industrial dispute exists between Wolverhampton Iron and Steel Company, 3/1, Kashi Nath Dutta Road, Calcutta-36 (hereinafter referred to as the company), and their workmen represented by the Wolverhampton Iron and

Steel and Associated Concerns Workers" Union, 80. B.T. Road, Baranagore, Calcutta-36, relating to the matter specified in the schedule below, being a matter specified in the Schedule. II to the Industrial Disputes Act, 1947 (XIV of 1947);

And whereas under the Government of West Bengal, Labour Department Order No. 2829/IR/10L-77/59 dated 29 June 1959, read with corrigendum No. 5511-IR/IR/10L-77/59, dated 12 November 1959, the said dispute was referred to the first labour court constituted under notification No. 1025-IR/IR/3A-3/57, dated 5 April 1957, for adjudication;

And whereas the said first labour court has been replaced by the sixth industrial tribunal constituted under notification No. 3115-IR/IK/3A-6/59, dated 21 June 1960, and has in consequence been abolished by notification No. 3508-IR/IR/3A-9/59, dated 11 July 1960;

Now, therefore, in exercise of the power conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor is pleased to refer to the Seventh Industrial Tribunal constituted under notification No. 3115-IR/IR/3A-6/59, dated 21 June 1960, the proceedings of the industrial dispute between the said company and their workmen, relating to the matter specified in the schedule below for adjudication in super session of the orders contained in order No. 2829-IR/IR/10L-77/69 dated 29 June 1959, read with corrigendum No. 5511-I.R./IR/10L-77/59, dated 12 November 1959, referring the said dispute to the first labour court.

4. In spite of the objection taken by the petitioner-firm to the effect that the notification dated 25 July 1960 superseding the previous reference and referring the same dispute to the seventh industrial tribunal was illegal, void and inoperative and that the tribunal had no jurisdiction to adjudicate in the matter, the seventh industrial tribunal assumed jurisdiction, heard the matter and made an award.

5. By the aforesaid award, the seventh industrial tribunal held that the reference was a valid reference and that it had jurisdiction to adjudicate the dispute referred to it. On the merits, the tribunal held that the order of dismissal was not justified. In the view taken, the tribunal awarded as follows:

All the concerned ten workmen shall be reinstated on their reporting¹ for duty to the company, within a month from the publication of this award in the Calcutta Gazette and they shall also get back-wages for six months at the rate last drawn before dismissal.

6. The propriety of the award is being disputed in this rule.

7. On behalf of the petitioner it was contended, in the first place, that after having made the reference to the first labour court, it was not within the competence of the State Government to supersede the reference. In this contention, Mr. Arua Kumar Dutt (Sr.), learned advocate for the petitioner-firm, is

supported by a decision of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, , in which it was held that the Industrial Disputes Act did not expressly confer any power on the appropriate Government to cancel or to supersede a reference, made u/s 10(1) of the Act, and that such a power could not be claimed by implication on the strength of Section 21 of the General Clauses Act. I, therefore, uphold the contention that the notification dated 21 July 1960, in so far as it purported to supersede the previous reference, was bad.

8. It was further contended, on behalf of the petitioner, that if the first reference could not be superseded, a second reference on the same terms could not be made in exercise of the power of the State Government u/s 10(1)(d) of the Act, so long as the first reference was pending. It was also contended what the State Government did could not be justified by invoking the power of the State Government to withdraw and transfer a proceeding from one tribunal to another, u/s 33B of the Act, firstly, because no such transfer was, in fact, made, regard being had to the language of the notification and, secondly, because after abolition of the first labour court, an order of withdrawal and transfer, u/s 33B of the Act, could not be made, the section contemplating merely transfer of proceedings pending before an existing labour court or tribunal to another.

9. This argument is not very well conceived. It is nobody's casa that the abolition of the first labour court was illegal. The challenge is confined to the legality of placing of cases, which were pending before the abolished labour court, before another tribunal. It is well known that at times labour courts or tribunals are appointed for a limited time and such courts or tribunals cease to exist by efflux of time. The appropriate Government may also abolish courts or tribunals due to administrative exigencies and may establish other courts or tribunal, in their places. There is nothing in the scheme of the industrial Disputes Act which takes away the aforesaid powers from the appropriate Government.

10. This point came up for consideration before the Supreme Court in the case of *Minerva Mills Ltd. Vs. Their Workers*, . In that case, the Government of Mysore referred certain disputes to a tribunal constituted for one year only. When the life of that tribunal came to an end by efflux of time, the tribunal had reached the stage of framing of issues only in some of the disputes. By another notification, the Government of Mysore constituted another tribunal and acting u/s 10(1)(c) of the Act referred all the disputes, left undisposed of by the first tribunal, to the newly constituted tribunal. The notification was not very happily worded in that it treated the situation created by the cessation of the first tribunal as creating a vacancy in office of the members of the tribunal and sought to remedy the situation in the following manner:

And whereas the said period of one year has expired creating a vacancy in the office both of the chairman and two members. Now, therefore, in exercise of the power conferred under Sections 7 and 8, Industrial Disputes Act, 1947, His Highness the Maharaja of Mysore is hereby pleased to constitute an industrial tribunal for adjudication of industrial disputes in the Mysore State in accordance

with the provisions of the Act and further to appoint the following persons as chairman and members thereof:

* * * Under Section 10(1)(c) of the Industrial Disputes Act, 1947, His Highness the Maharaja is pleased to direct that the tribunal now constituted under this notification shall hear and dispose of all the references made to the previous tribunal. Which remained undisposed of....

11. The jurisdiction of the last appointed tribunal to hear and dispose of the undisposed of cases before the first tribunal being challenged, the Supreme Court held as follows:

In our opinion, the Labour Appellate Tribunal and the High Court were right in holding that from these provisions it could not be held that it was implicit in Section 7 that the Government could not withdraw a dispute referred to a tribunal or make the appointment of a tribunal for a limited period of time. In our opinion, under the provisions of Section 7, the appropriate Government has ample power of constituting a tribunal for a limited time, intending thereby that its life would automatically come to an end on the expiry of that time. The contention therefore of Mr. Daphtary that the notification appointing the first tribunal for a period of one year was illegal and that the first tribunal continues to exist is without force. His further contention that the Government could not withdraw the dispute referred to the first tribunal so long as the members of the first tribunal were available and could not hand it over to the second tribunal cannot also be sustained.

Mr. Daphtary then contended that in any case the notifications issued on 27 June 1952 were defective and illegal and by its force the second tribunal was not properly constituted. Emphasis was laid on the words of the notification wherein it was said that on the expiry of one year a vacancy in the office of both the chairman and the two members had occurred and that in exercise of the powers conferred by Section 7 and 8, His Highness the Maharaja of Mysore was pleased to constitute an industrial tribunal for adjudication of industrial disputes in the Mysore State in accordance with the provisions of the Act and further to appoint the following persons as chairman and members....

It is true that this notification is not happily worded. When the life of the first tribunal automatically came to an end by efflux of time, no question of vacancy in the office really arose and it was not a case falling under Sub-Clause (2) of Section 8 but the situation that arose fell within the ambit, of Section 7. Substantially the notification most by taken to have been made u/s 7 and in express language it says that the Government is pleased to constitute an industrial tribunal for adjudication of industrial disputes in the Mysore State in accordance with the provisions of the Act. Reference to S 8 and to a vacancy in the notification are in the nature of surplus ages and are the result of confused thinking on the part of those responsible for this notification.

The last paragraph of the notification makes the matter clear beyond any doubt.

It Bays that u/s 10(1)(c) of the Industrial Disputes Act His Highness the Maharaja Js pleased to direct that the tribunal now constituted under this notification shall hear and dispose of all the references made to the previous tribunal constituted under the notification of 15 June 1961 and which have remained undisposed of on 15 June 1952. This notification does not say that this new tribunal cannot hear the dispute de novo. If any prejudice is caused to the employers, it will be open to the newly constituted tribunal to begin the bearing of the disputes from the very first stage but as it is clear that all that happened to these disputes when they were pending before the first tribunal was that only issues were framed, and if any party has any objection to these issues, It will be open to the newly constituted tribunal to reframe those issues.

12. The decision in *Minerva Mills Ltd. Vs. Their Workers*, was later on explained by the Supreme Court in the case of *The State of Bihar Vs. D.N. Ganguly and Others*, in which Gajendragadkar, J., observed as follows:

It would now be necessary to refer to the decisions to which our attention was invited in the course of arguments. For the appellant Dr. Banerjee has strongly relied on the decision of this Court in *Minerva Mills Ltd. Vs. Their Workers*, . He contends that Mahajan, J., who delivered the judgment of the Court, has expressly observed in his judgment that from the relevant provisions of the Act, "it could not be held that it web implicit in Section 7 that the Government could not withdraw a dispute referred to a tribunal or make the appointment of a tribunal for a limited period of time."

The argument is that this observation shows that the Government can withdraw a pending reference from one tribunal and refer it to another tribunal, and according to the appellant, that is exactly what has been done by it in the present case. In the case of *Minerva Mills, Ltd*, however the question about the implied power of the appropriate Government to cancel its order made u/s 10 did not arise for consideration. The point which was raised by the appellant was that the Government had no power to appoint a tribunal for a limited duration; and the argument was that if industrial disputes are referred to a tribunal, all the said disputes must be determined by the said tribunal and not by any other tribunal, notwithstanding that the appointment of the original tribunal was for a limited duration. The first tribunal in the said case had been appointed on 15 June 1952, and some industrial disputes had been referred to it. The tribunal was appointed for one year. During its tenure the tribunal disposed of some of the disputes referred to it, but four disputes still remained undisposed of. For disposing of these references, a second tribunal was appointed on 27 June 1952. The validity of the constitution of the second tribunal was impugned by the appellant and it was urged that it is the first tribunal alone which can and must try the remaining disputes. This argument was rejected by this Court, and it was held that it was perfectly competent to the appropriate Government to appoint a tribunal for a limited duration. It would be noticed that in this case there was no question of cancelling an order made u/s 10(1). The said order remained in force, and the

only step which the Government took was to make an order constituting a for tribunal to dispose of the references which had not been adjudicated upon by the first tribunal. It was on these facts that this Court took the view that it was competent to the Government to refer the said remaining disputes for adjudication to the second tribunal. Strictly speaking, there was no occasion to withdraw any dispute from the first tribunal; the first tribunal had ceased to exist; and be there was no tribunal which could deal with the remaining disputes already referred u/s 10(1). That is why the Government purported to appoint, a second tribunal to deal with the said disputes. In our opinion, the decision in the *Minerva Mills, Ltd.*, cannot be cited in support of the proposition that the appellant has power to cancel the order of reference made by it u/s 10(1).

13. In the present case, the abolition of the first labour court left; the instant dispute undisposed of by that Court. There was no other Court or tribunal which could deal with the dispute which had been referred to that Court. To have left dispute Shore would have meant putting the dispute in cold storage for ever. That would not have the effect of resolving an industrial dispute but of perpetuating it. In the circumstances of the case, nothing under the industrial Disputes Act prevented the State Government from making a fresh reference to another tribunal. That is what the State Government purported to do but did in an exceedingly clumsy manner. The portion of the notification, whereby the previous reference to the labour court was sought to be superseded, was in the nature of surplusage and was the result of confused thinking on the part of those responsible for the drafting of the notification. I read the notification shorn of the confusing surplusage and hold that in making the second reference the Government did not exceed its jurisdiction under the Act.

14. I now turn to the contentions against the merits of the award. The tribunal gave the following reasons for holding that the orders of dismissal of the workmen were bad:

(a) When there was a chargesheet against the workers and their explanation was received it was certainly incumbent upon the company to hold an enquiry regarding the chargesheet giving the workers concerned suitable and sufficient opportunity to defend themselves and put forward whatever case they might have against the charges. In other words, the company should have held a domestic enquiry, Pit the company did not follow this procedure. It did not hold any domestic enquiry. It simply rejected the explanation and then informed the workers of its decision to dismiss them subject to permission being obtained from the industrial tribunal before which another adjudication proceeding relating to another dispute of some workers was pending. The action of the company in making the decision to dismiss all the employees served with the chargesheet, dated 5 September 1955, without any domestic enquiry cannot be supported. This decision to summarily dismiss them without an enquiry clearly appears to be mala fide, arbitrary and highhanded.

(b) It is contended on behalf of the company that even if there was no enquiry

regarding the charges made against these workers in the notice, dated 5 September 1955, that would not by itself vitiate the order of dismissal and the tribunal to which the dispute is referred may and should go into the merits of the dismissal and decide whether the dismissal was based upon correct and proper charges of misconduct. This principle cannot be disputed and be now well established?Punjab National Bank case 1959 II LLJ 166 at 168.

So this tribunal should also consider whether there was any merit in the charges levelled against these workers by the company's notice, dated 5 September 1955, In order to come to a decision on this point the tribunal must necessarily act upon the evidence that has been produced before it viewed in the light of surrounding circumstances and probabilities. The only evidence to prove that the concerned workers deliberately adopted "slow-down tactics since the reopening of the factory consists of the oral testimonies of O.P.W. 1, Sri Hari Narayan Chatterjee, the manager of the company, and O.P.W. 2, the works manager of the company. The documentary evidence consists of Exs. I, J and K, the stock book, the order book and the job book. Exhibits I-1, J-1 and K-1 are the summaries of the relevant entries in these prepared by the company. The summaries can be accepted as correct. I have already stated above that there was enough ground for mutual suspicion between the parties when the factory reopened on 31 August 1955. In view of this position, when one party makes a charge against the other just from the reopening date, the charge requires to be carefully scrutinized before it can be accepted and there must be good and sufficient evidence in support of the charge. I am unable to accept the oral evidence of the manager and the works manager as sufficient proof of the fact that the workers deliberately adopted "slow-down" tactics. Of course, the documentary evidence consisting of Exs. I, J and K and M-1, K-1, and J-1 requires careful scrutiny. The company has proved the balance stock in hand on 31 August 1955 by the summary Ex. I-1, the orders in hand on 31 August 1955 by Ex. J-1 and the comparative output of some of the concerned workers during the alleged "slow-down period and the previous normal period before to closure of the factory by Ex. K-1. No doubt the comparative statement of work as contained in Ex. K-1 shows less work during the period commencing on 31 August 1955 than the work done previous to the closure of the factory on 19 August 1955. In fact in their written statement the workmen have also stated that the work was a bit less after reopening but they have also given the explanation that this was due to the company's failure to give adequate work to the workmen and not fix the workman's reporting to "Blow-down" tactics. The workers have stuck to this explanation in their evidence. For instance, P.W. 1 Sri Sakumar Mondal has stated that at the time of chargesheet there was not much work in the factory. He has further stated that they used to do whatever work was given to them. He has also stated that there was little work in the factory and their work was regulated by the materials received from the store. So the admitted position should be taken to be that the work done in the factory after reopening was lesser than the work done before the closing down on 19 August

1955. But this will not necessarily mean that the workers deliberately adopted "go-slow" tactics and this was the reason for less work after reopening. The explanation of the workers has also to be considered carefully. The output of work of each employee working since the reopening of the factory on 31 August 1955 must be determined by the amount of work given to him for execution and also the quantity of materials given to him for the work. If he was given less work, his output must be less. So the company must prove that though each worker was entrusted with the normal amount of work as in the period preceding the closure of the factory on 19 August 1955 his output was much less for some case active days and in such case only he may quite reasonably be condemned Of deliberately adopting go slow tactics after reopening of the factory on 31 August 1955. But as I can gather, there is absolutely no evidence to prove what actual work each Individual worker who Joined the factory after its reopening on 31 August 1955 was asked to do and what quantity of materials was supplied to him for the work from day to day since the reopening of the factory. Exhibit I simply shows the general stock in hand. Exhibit J shows that on 31 August 1955 only seven orders were pending for execution. The number of workers in the factory was about 20 then. Exhibit K shows the comparative table of output of work during the alleged "slowdown" period and the period preceding the closing of the factory on 19 August 1955. So none of these documents throws any light on the actual amount of work that each worker was entrusted to do and the quantity of materials supplied to each after the reopening of the factory and unless these data are provided the workers cannot be condemned for having adopted "go-slow" tactics simply because of doing lesser work after the reopening of the factory on 31 August 1955 than the work done before the closure on 19 August 1955. The company has not provided this data. It is not stated that there is no record to show what work was entrusted to each worker on particular day and what work he actually did as against that work. Accordingly, I hold that the evidence produced by the company, both oral and documentary, is not sufficient and satisfactory enough to prove that the concerned workers of this case deliberately adopted "go-slow" tactics after the reopening of the factory on 31 August 1955 and thereby slowed down production by a concerted plan to the serious prejudice of the company.

15. It was contended on behalf of the petitioner that the tribunal should have itself gone into the evidence, since there had been no proper departmental enquiry before dismissing the workmen and should have come to its own conclusion if the workmen had really gone slow in their work. It was further contended that if the tribunal had, on consideration of the entire evidence, come to the conclusion that the workmen had gone slow in the work, it should not have interfered with the penalty imposed. Reliance was placed in support of the contention on a decision of the Supreme Court- Sasa Musa Sugar Works (P) Ltd. Vs. Shobрати Khan and Others, .

16. In the case before the Supreme Court, while conciliation proceedings were going on between the management of a sugar factory and its workers, in respect

of certain demands, the workmen continued to adopt go-slow tactics in spite of the advice of the labour officer. The Labour Commissioner then ordered the labour officer to tell the workmen that no further conciliation proceedings would take place until the go-slow was called off. The labour officer then informed the management that it could take disciplinary action against the workmen concerned with the permission of the Industrial tribunal. Consequently, the management suspended 33 workmen by a notice given on the night of 31 January 1952 as from 1 February 1952. It was said in the notice that these 33 workmen had been found taking a leading part in the unjustified go-slow which was in contravention of the Act and they were therefore suspended from service until further orders. This notice had some good effect and work improved for four days; but from 6 February go-slow was started again. Consequently, the management suspended seven more workmen from 7 February by giving notice to them in the same terms. In which the notice had been given to the thirty-three workmen, on 31 January. As adjudication proceedings were pending since September 1951 in respect of another dispute between the management and its workmen, the former applied on 6 February 1952 u/s 33 of the Act for permission to dismiss the thirty-three workmen and on 11 February 1952, for permission to dismiss the remaining fifteen workmen who had been suspended later. The forty-eight workmen in their turn applied on 29 March 1952 u/s 33A of the Act to the industrial tribunal and their case was that they had been suspended as a measure of punishment and that as this was done without the sanction of the industrial tribunal, the management had committed a breach of Section 33. The industrial tribunal found that an enquiry had been held by the management before the two applications u/s 33 were made; but it is held that all the evidence which could have been taken in the enquiry by the management had been led before it and to was be full possession of the facts, and no question of any prejudice to the workmen arose, as it would be open to it on a review of the entire evidence before it to decide whether the applications for permission to dismiss should be granted or not. It also held that the order of suspension was not as a measure of punishment in the circumstances of this case and that it was an order pending enquiry by the management and proceedings u/s 33 before the tribunal, and that, as there were no standing orders as to suspension in this factory, the management's liability to pay the workmen their wages during the period of suspension remained. The Industrial tribunal, after an elaborate discussion of the evidence, came to the conclusion that there was a deliberate go-slow resorted to by the workmen in January and February 1952 and that it was unjustified as it took place while conciliation proceedings were pending. Having given these findings, the industrial tribunal held that there was no evidence to show that of the forty-eight workmen concerned, sixteen workmen named by it had taken part in the go-slow or instigated it. It therefore refused the application u/s 33 with respect to these sixteen workmen. As to the remaining thirty-two workmen it held that as some standing orders which were under contemplation at the time provided either dismissal or suspension for seven days in case of misconduct, it was proper to grant leave to the management to

suspend the workmen for seven days, in view of some opinion expressed by a Go-Slow Committee appointed some time before by the Bihar Central (Standing) Labour Advisory Board. In effect, therefore, it rejected the prayer of the management for dismissal with respect to these thirty-two workmen also. Finally, it rejected the application u/s 33A. On the above facts the Supreme Court held that the only order possible on the applications of the management u/s 33 was to permit it to dismiss the forty-eight workmen, provided there was evidence against them all. It was not open to the industrial tribunal when it was asked to give permission to dismiss to substitute some other kind of punishment and give permission for that. The industrial tribunal was satisfied that there was misconduct and that finding has been upheld by the Appellate Tribunal. As such, if there was evidence that, case forty-eight workmen were guilty of misconduct, the industrial tribunal was bound to accord permission asked for.

17. The contention made on behalf of the petitioner, relying on the Supreme Court decision, is not; very well conceived and the Supreme Court decision does not help the contention. In the instant case, it appears from the extract from the award quoted above, that the tribunal went into the evidence, with some elaboration, and came to the definite conclusion that the workers could not be condemned of having adopted go-slow tactics. That distinguishes this case from the case before the Supreme Court, in which the definite finding of the tribunal was that there had been a deliberate go-slow resorted to by the workmen. The criticism that the tribunal did not go into the evidence led before it, in arriving at its conclusion, is without any foundation, as appears from the extract from the award quoted hereinbefore.

18. It was next contended that there were pieces of documentary evidence proved before the tribunal, on the basis of which the tribunal should have come to a different conclusion of fact, namely, stock book, order book and job register of the petitioner company and certain charts prepared by the company on the basis of the abovementioned books (Exs. I, J and K series,). It appears from the extract from the award, hereinbefore quoted, that the tribunal considered those pieces of documentary evidence, before it came to its conclusion. There is no error apparent on the face of the record or of the award which justifies interference in exercise of my jurisdiction under Article 223 of the Constitution. I, therefore, overrule the contentions against the merits of the award.

19. This rule is accordingly discharged. There will be no order as to costs.