

(2008) 02 MAD CK 0037
In the Madras High Court
Case No : W.A. No. 887 of 1992

Workmen of Jothi Engineering Works	Vs	APPELLANT
The State of Tamil Nadu		RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5), 2

Citation : (2008) 02 MAD CK 0037

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : V. Prakash for N. Ravichandran, for the Appellant; M. Dhandapani, Spl. Govt. Pleader for R1, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard Mr. V. Prakash, learned senior Counsel appearing for the appellant-union on 28.2.2008 and at his request, the

matter was subsequently posted today and also heard learned Special Government Pleader appearing for the first respondent. The second

respondent-Management, though served, is not present either in person or through counsel.

2. The appellant-Union, which is a registered union, raised an industrial dispute regarding the alleged closure of the second respondent-union at

Madurai u/s 2(k) of the Industrial Disputes Act. After failure of conciliation, the Conciliation Officer sent a report to the first respondent-State

Government. The State Government, by G.O.(D) No. 882 Labour and Employment Department dated 2.9.1991, refused to refer the dispute to

the Labour Court, by exercising the power u/s 10(1) of the Industrial Disputes Act. It is stated in the said order that the second respondent-

Management is a very small establishment and they have also justified the reason for closure and the workmen have received statutory

compensation and closed their accounts. Therefore, there is no question of any reference of the issue of adjudication.

3. Aggrieved by the same, the appellant-union filed W.P. No. 14159 of 1991. The matter was heard by the learned Single Judge. By an order

dated 30.4.1992, the writ petition was dismissed. Learned Judge recorded the statement of the learned Counsel for the second respondent that

even if the reference is made, it will only be a stale reference and factory licence has also been surrendered and no manufacturing activity was

shown to have been carried on by the second respondent. In the light of the same, learned Judge referred to a Division Bench judgment of this

Court in Shaw Wallace and Co. Ltd. Vs. State of Tamil Nadu and Others, and held that it is for the Government to arrive at a prima facie

conclusion of referring the dispute and if the Government is of the opinion that there is no case made out, there is no obligation to refer the same.

There is no illegality in the order of the first respondent. Against the said order, the present writ appeal has been filed.

4. However, when the matter came up on 26.6.2000, since no step was taken for serving the second respondent, the writ appeal was dismissed. It

was contended by the learned Counsel for the appellant that the appellant has filed an application for serving the second respondent through

substitute service and that was not taken note of by this Court. Subsequently, on his application, the writ appeal was restored on 3.8.2007 and

came to be posted before this Court.

5. Mr. V. Prakash, learned senior Counsel appearing for the appellant strenuously submitted that placing reliance upon the Division Bench

judgment cited supra was erroneous. Even in the said judgment, the Division Bench held that u/s 10(1) of the Industrial Disputes Act, reference is a

rule and refusal is an exception. He also submitted that during the proceedings before the Conciliation Officer, the Authorities are not allowed to

give any evidence. There is no material for the Government to come to the conclusion that the factum of closure has been proved.

6. Learned Counsel also submitted that the industrial disputes Act does not make any difference in small establishment or big establishment and so

long as it is an industry within the meaning of 2(j) of the Industrial Disputes Act, there cannot be any distinction on the question of reference.

Learned Counsel also submitted that it is only a camouflage and the industry is carrying on its business in the very same place and pursuant to the

so called closure, the order of termination was issued by K.N.K. Indira, who had predeceased her husband and her husband had died even on

8.6.2001 and the legal heirs have been continuing the said business. It is also stated that in the same location, the same owners are running the

business in the name of Jothi Krishna Pumps.

7. Learned Counsel brought to the notice of this Court, the judgment of subsequent Division Bench of this Court, reported in 2007 II LLJ 983

Karur Vysya Bank Ltd. v. Karur Vysya Bank Employees' Union, wherein P. Sathasivam, J. (as he then was), has referred to all the contentions

and on the question of Section 10 of the Industrial Disputes Act, held that the order of the Central Government in refusing to refer the dispute,

which related to the claim of Jewel Appraisers for regularization, was wrong and the learned Single Judge was correct in directing reference of the

dispute and also referred to the decision of the Supreme Court in which it was held that the Government's power u/s 10 read with 12(5) is very

limited and the Government, in the guise of ordering reference, cannot go into the merits of the dispute.

8. We find that the order of declining to refer the dispute which is impugned in the writ petition is clearly erroneous on two counts. Whether it is a

small establishment or big establishment, it has no relevance to decide the question of referring the dispute. Under the Industrial Disputes Act, what

is contemplated is that whether it is an industry within the definition of Section 2(j) of the Industrial Disputes Act. The factum of closure has been

proved. In fact, the first respondent has not even filed any counter. Merely satisfied by circulating the files relating to the Government order.

9. In the light of the order passed by the subsequent Division Bench in 2007 II LLJ 983 cited supra, we have no hesitation to say that the order of

refusing to refer the dispute is illegal and the said order is liable to be set aside and the same is accordingly set aside.

10. Learned Counsel submits that the Court itself can make an order of directing reference, by placing reliance on the latest decision of the

Supreme Court reported in *Rashtriya Chemical and Fertilizers Ltd. and Another Vs. General Employees Association and Others*, , Dr. Arijit

Pasayat, J. speaking for the Bench, after referring to the previous decision of the Supreme Court, in paragraph 9 held as follows:

9. The exception to the above is, when the court finds that the appropriate Government refuses (sic. refusal) to make a reference of a dispute, is

unjustified. In such circumstances, the court may direct the Government to make a reference *Sankari Cement Alai Thozhilalar Munnetra Sangam v.*

Govt. of T.N., V. Veerarajan v. Govt. of T.N. and TELCO Convoy Driver's Mazdoor Sangh v. State of Bihar.

Therefore, in a given case, the Court finds that the case is made out for reference. Hence, the question of sending the issue back to the

Government and the Government to reconsider the matter does not arise and the reasons given by the Government for declining reference cannot

stand scrutiny of law.

11. In the circumstances, we direct the first respondent-State Government to pass order of reference referring the dispute raised by the appellant-

union, within a period of eight weeks from the date of receipt of a copy of this order. The writ appeal stands allowed accordingly. No costs.