
(2007) 08 DEL CK 0271

In the Delhi High Court

Case No : Writ Petition (C) No. 13023 of 2005

Workmen of M.C.D.

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2, 22

Trades Disputes (Arbitration and Inquiry) Ordinance, 1941 — Section 2(1)

Citation : (2009) 123 FLR 239

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Varun Prasad, for the Appellant; Geeta Mehrotra, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—Counsel for the respondent states that due to bona fide inadvertence, the counter affidavit filed by her in the present writ petition does not relate to the present writ petition as the paper book forwarded by the department to the counsel was in respect of some other writ petition, though the names of the parties are the same. She, Therefore, submits that the averments made in the aforesaid counter affidavit are not relevant to decide the present writ petition. However, on perusal of the paper book relating to the present writ petition, counsel for the respondent states that she is prepared to argue the matter on merits.

2. With the consent of counsels for both the parties, the matter is taken up for hearing and is being disposed of.

3. By way of the present writ petition, the petitioners have assailed the award dated 22nd August, 2003 passed by the Industrial Tribunal-III in I.D. No. 158/2002. By passing the impugned award, the Industrial Adjudicator dismissed the claim of the petitioners by holding that they had not proved the fact that they had raised any demand on the respondent/management and that a dispute

or difference can only come into existence when there is proper and valid demand on behalf of the workman and the same is refused unlawfully and arbitrarily by the management. It was held that in the absence of any valid demand and refusal thereof, no industrial dispute existed between the parties and in that view of the matter, a no relief award was passed without going into the merits of the matter.

4. Counsel for the petitioner states that there is an error in the aforesaid award inasmuch as the Industrial Adjudicator failed to appreciate that it is not necessary that a written demand be raised on the management so as to treat the same as disputes or differences arising for adjudication. In this regard, he places reliance on a judgment of the Supreme Court in the case of Shambu Nath Goyal Vs. Bank of Baroda, , wherein the Supreme Court after referring to Section 2(k) of the Industrial Disputes Act, 1947 which defines "Industrial Dispute", held as below : " A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into-existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because Section 22 forbids going on strike without giving a strike, notice. The key words in the definition of industrial dispute are "dispute" or "difference". What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd. [1960] 1 All E.R. 244. Lord Denning while examining the definition of expression Trade dispute" in Section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:

by definition a "trade dispute" exists whenever a "difference" exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening. "

Thus the term "industrial dispute" connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the Undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.

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...From the material placed before the Government, Government reaches an administrative decision whether there exists an industrial dispute or an industrial

dispute is apprehended and in either event it can exercise its power u/s 10(1)... The Court cannot Therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi judicial determination. No doubt it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, Therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because in its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those matters, (vide State of Madras Vs. C.P. Sarathy and Another, .

5. Keeping in view the aforementioned judgment, which clearly notes that there is no specific requirement in the I.D. Act that a dispute has to be raised only by making a demand in writing, any such interpretation given to Section 2(k) of the I.D. Act which narrows the definition of the term, "industrial dispute" is not permissible. Thus it cannot be held that merely because a demand was not given in writing by the petitioners to the respondent management, there does not exist any industrial dispute between the parties. Making a written demand is not a sine qua non for raising an industrial dispute. Once the appropriate Government passed an administrative order referring an industrial dispute for adjudication to the industrial adjudicator, it has to be assumed that an administrative decision was arrived at by the Government after examining the material placed on the record that there exists an industrial dispute. Learned Counsel for the respondent has no quarrel with the aforesaid position of law.

6. In this view of the aforesaid facts and circumstances, the impugned award dated 22nd August, 2003 is set aside. The case is remanded back to the Industrial Tribunal for adjudicating the industrial dispute. The parties are directed to appear before the Industrial Adjudicator on 3rd September, 2007 for further proceedings.

7. In terms of the aforesaid order, the writ petition stands disposed of with no order as to costs.