

(1994) 04 MAD CK 0059

In the Madras High Court

Case No : Writ Petition No. 16715 of 1991

Workmen of Sundaram Industries Ltd.

APPELLANT

Vs

Sundaram Industries Ltd. and Others

RESPONDENT

Date of Decision : 26-04-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1994) 04 MAD CK 0059

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Judgement

K.S. Bakthavatsalam, J.—The prayer in the writ petition is to issue a writ of mandamus directing the second respondent to refer the dispute relating to the transfer of 122 workmen declined to be referred in G. O. (D. No. 1076, dated 28 October 1919), by the second respondent.

2. Workmen of Sundaram Industries, Ltd., represented by Sundaram Industries Employees Union, has come up before this Court, with the aforesaid prayer.

3. It seems the petitioner-union raised an industrial dispute against the first respondent management over the issue relating to transfer of 122 workmen. The petitioner-union raised the dispute through letters, dated 15 May 1989, 28 May 1989 and 7 May 1991. The common cause of the workers involved is transfer of 122 workers to new station based on the conciliation report of the Joint Commissioner of Labour, Madurai. The second respondent had declined to refer the issue, by the impugned order relating to the transfer of 122 workers, for the reason that 33 workmen had accepted the transfer orders and joined duty at the new stations.

4. The petitioner-union alleges in the affidavit filed in support of the writ petition, that the first respondent-company is a public limited company and has a number of factories, one at Madurai, where rubber products are manufactured and coach factories at Madurai, Pudukottai and Viralimalai. It is stated that in the said coach

factories, the first respondent builds automobile coaches for leyland and other heavy vehicles. It is alleged in the affidavit that the management itself runs a trade union under the name of T. V. S. Workers Union and has been imposing unilateral conditions of service and the said union is a myth to obtain legitimacy. It is also alleged that the petitioner-union was formed with an overwhelming majority of the workers employed in the rubber factory at Madurai and coach factories at Madurai, Pudukottai and Viralimalai. It is also alleged in the affidavit that immediately after the formation of the petitioner-union, over 100 workers were transferred and the petitioner-union has raised an industrial dispute against the said mass transfer of certain workers. It is also stated that the workers raised an industrial dispute making a complaint of unfair labour practice against the respondent-management. It is also alleged that the said transfer is a mala fide to put down the petitioner-union and to perpetuate the respondent to run the management trade union. The petitioner alleges in the affidavit that though reasons are stated in the impugned order, the workers concerned joined duty under protest. It is also stated that the issue before the Government is not the power, but whether the power has been exercised mala fide as a measure of victimisation. It is also stated in the affidavit that the reason stated are all adjudicatory and that it is settled in law that the Government cannot decline to refer the dispute for adjudication by giving reason which determines the lis between the parties. It is also stated in the affidavit that the power under S. 10(1) is an administrative power and that the government cannot adjudicate the dispute. With these allegations, the petitioner-union is before this Court with the prayer stated above.

5. A counter-affidavit has been filed by the first respondent-management. It is stated that the first respondent-management unit is one of the units of the T. V. S. group of industries, and has got three divisions, viz :

- (1) the rubber division;
- (2) the coach division; and
- (3) the tyre service division.

and the majority of the workmen of the said three divisions are members of the T. V. S. Workers" Union (INTUC). It is stated that the coach division has three units at Madurai, Viralimalai and Pudukottai and it is engaged in the body building of buses, lorries, etc. It is stated that after the establishment of coach division at Viralimalai and Pudukottai, it has undergone enormous stress and strain due to the policy of the Government and with a view to sustain its existence, all the possibilities were explored by the first respondent-management and with a view to sustain the business, it is essential to see that the customer is satisfied fully. As such, it is stated in the counter-affidavit that the first respondent had to transfer and post some of the workmen from Madurai, Viralimalai and Pudukottai to various locations so that they will be utilised for "after sales service. " It is stated that such a transfer was made without any

hindrance to the promotion and the benefits which such employees have been enjoying. It is also stated that the person who have been transferred for after sales service were granted an additional allowance of Rs. 75 or Rs. 150 per mensem per worker, during the period of such transfer. It is also stated that most of the workmen transferred to Viralimalia and Pudukottai have reported at the transferred places and they are working. It is also stated in the counter-affidavit that the transfer and deputation of the employees have been made only due to exigencies of work to meet the requirements of the units at Viralimalai and pudukottai and that there is no mala fide in the transfers. It is also stated in the counter-affidavit that the petitioner had raised the issue of transfers, and issued a strike notice on 19 February 1989. After getting reply from the management, the conciliation took place and ultimately it ended in a failure and the Conciliation Officer submitted the conciliation failure report to the Government. It is stated in the counter-affidavit that the Government has passed the order, considering the facts of the case and that it is not illegal. It is also stated that the management has got the power to transfer the employees from one unit to another and that the transfer of an employee is part of the conditions of service and the employees are bound to obey the orders of transfer and work in the place where they have been transferred and posted. It is also stated that the majority union, viz. T. V. S. Worker's Union (INTUC) has not questioned the transfer of employees and that 132 workers belonging to T. V. S. Worker's Union obeyed the order of transfer and reported for work in the transferred places. It is also stated in the counter-affidavit that transferability from one establishment to another is an incident of service and that the employer is the best judge to decide upon the utilization and distribution of its manpower amongst various units and places. It is also stated that the petitioner-union is not a registered on and that it has no locus stands to question the transfer. The allegation of the petitioner, that the petitioner-union is a majority union, is denied. The allegation of the petitioner that the management had created its own upon and controlled the said union and had god elected its own nominees as office-bearers of the said union is totally a false statement. It is also stated that the allegation of the petitioner, that the management had made four-pronged attack on the petitioner-union and its members, is also denied in the counter-affidavit. It is also stated in the counter-affidavit that the government has rightly declined to refer the matter for adjudication. It is also stated that there is no mala fide and the transfers are made purely on administrative reasons and as such the Government has rightly declined to refer the matter for adjudication. It is also claimed that a very small section of the workmen are now attempting to abuse the writ jurisdiction of this court, when a majority of workmen transferred have accepted and obeyed the orders of transfer, realising the precarious position of the respondent and its bids for survival.

6. A reply-affidavit has been filed by the petitioner stating that the workmen who have joined in the respective stations did so under protest and without prejudice to the industrial dispute raised against the mala fide transfer.

7. Sri. V. Prakash, the learned counsel for the petitioner-union, contended that the transfer made in this case is victimisation and the the Government cannot go into that question and adjudicate the issue. Learned counsel further adjudicate the issue. Learned counsel further states that the principle laid down in Hindustan Lever, Ltd. v. Their Workmen 1974 I LLJ 93, will not apply to the facts of this case where the matter was gone into by the Labour Court and compensation was given with regard to victimisation. Learned counsel further states that tin all such cases, a reference is a must under S. 10 of the Act and the Government cannot adjudicate the issue by stating its own reasons.

8. On the other hand, Sri. S. Jayaraman learned counsel appearing for the respondent-management. Has produced before me a list of workers transferred from two unions. The list showing details of transfer, with regard to members of Sundaram Industries, Ltd. Employees Union, reads as follows :

".... Members of Sundaram Industries Ltd. Employees" Union (petitioner union) :

Transferred workmen - INTUC List :

1. Resigned under V.R.S. 43 persons 2. Retired 9 persons 3. Re-transferred 22 persons 4. Reported and now working at transferred place 49 persons 5. Transferred to Tyre Services Division 8 persons 6. Expired 1 person
----- Total 132 persons" -----

From the list as shown, it is seen that only 49 persons have reported and now working at transferred place. With regard to other persons, I do not think much remains to be said. Sri S. Jayaraman, the learned counsel for the respondent - management, refers to a passage in Shaw Wallace & Co. Ltd. v. State of Tamil Nadu (by Commissioner and Secretary, Labour Department), and Anr. 1988 I LLJ 172, in Para 19, at page 184 and it reads as follows :

"The order of the Government was challenged in writ of mandamus which was dismissed by a Single Judge of the High Court. A Division Bench of the High Court confirmed the same. The matter was taken to the Supreme Court by special leave. The first contention urged on behalf of the appellants was that the Government acted beyond its jurisdiction in proceedings to consider the merits of the dispute while deciding whether the reference could be made or not. The said contention was rejected by the Supreme Court with the following observations :

"This argument must be rejected, because when the appropriate Government considers the question as to whether a reference should be made under s. 12(5), it has to act under S. 10(1) of the Act and S. 10(1) confers discretion on the appropriate government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted under S. 12(4) the appropriate Government ultimately exercises its power under S. 10(1), subject to this that S. 12(5) imposes an obligation on it to record reasons for not making the reference when

the dispute has gone through conciliation and a failure report has been made under S. 12(4). This question has been considered by this Court in the case of *State of Bombay Vs. K.P. Krishnan and Others*, . The decision in that case clearly shows that when the appropriate government considers the questions to whether any industrial dispute should be referred for adjudication or not, it may consider, *prima facie*, the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even *prima facie* the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under S. 10(1) read with S. 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must therefore, be held that a *prima facie* examination of the merits cannot be said to be foreign to the enquiry which the appropriate government is entitled to make in dealing with a dispute under S. 10(1), and so, the argument that the appropriate government exceeded its jurisdiction in expressing its *prima facie* view on the nature of the termination of service of appellants 2 and 3, cannot be accepted."

Pointing out the above passage, the learned counsel appearing for the respondent management contends that the Government may refuse to make a reference, when the claim made is patently frivolous and as such, the impugned order in this writ petition may not be interfered with.

9. To the same effect, Shri P. Chandrasekaran, the learned Additional Government Pleader, appearing for the State, contends that the government has taken into consideration the entire facts and decided not to refer the matter for adjudication. According to the learned Additional Government Pleader, the State has not adjudicated the issue and the allegation of the petitioner that the state has got a policy as not to refer any dispute arising from T. V. Sundaram group, to the Government, is not correct. Such a wild statement as made by the learned counsel for the petitioner is based not on facts, and it is not warranted, states Additional Government Pleader, appearing for the State.

10. I have considered the arguments of Sri. V. Prakash, the learned counsel appearing for the petitioner-union, and of Sri S. Jayaraman, the learned counsel appearing for the respondent-management and of Sri P. Chandrasekaran, the

learned Additional Government Pleader, appearing for the State. As I have already stated above and also seen from the passage of the Supreme Court, extracted hereinabove relied upon by the learned counsel appearing for the respondent management, the issue now boils down only with regard to 49 workers, who have reported and now working at transferred place. With regard to other persons, in my view, the writ petition has become infructuous for the reasons stated in the statement, extracted above.

11. In *Hindustan Lever Ltd. v. Their Workmen* (vide supra), the Supreme Court had an occasion to consider the issue of a transfer of an employee from one department to another. The Supreme Court, in that case, has held that the transfer of an employee is at the discretion of the management provided the terms and conditions of service are not adversely affected. In this case, it is not disputed that the transfer is a condition of service, as stated in the counter-affidavit of the management. I am not able to see any mala fide in the transfers made, when transfers are made from two unions, and not from the members of the petitioner-union alone. For administrative exigencies, the transfers seem to have been made, as rightly stated by the State in the impugned order. In *Avon Services v. Industrial Tribunal* 1978 II LLJ 503, the Supreme Court has again held that taking action under S. 10(1) of the Industrial Dispute Act, is an administrative function of the Government and it is for the Government to form an opinion that an industrial dispute exists or is apprehended. On the facts of this case, in my view, the Government has come to the conclusion that there is no necessity for reference under S. 10 of the Industrial Dispute Act. A reading for the Government order also clearly shows that the Government had not adjudicated upon the issue, but has examined the matter to see whether a prima facie case has been made out. As such, in my view, there are no merits in this writ petition. It is also stated by the learned counsel for the management that even the said 49 workmen may be transferred back to the original place, as and when it is required, according to the administrative exigencies. As such, I do not see any merit in this writ petition and accordingly, it stands dismissed. No costs. It is open to the respondent management to consider the transfer of the said 49 workmen back to the original place at the earliest point of time, according to the administrative exigencies.