The Management Of Vs. The State of Karnataka

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Court : Karnataka

Decided On : Nov-16-2017

Judge : Raghvendra S.Chauhan

Appeal No. : WP 51095/2015

Appellant : The Management Of

Respondent : The State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE16H DAY OF NOVEMBER 2017 BEFORE THE HONBLE MR. JUSTICE RAGHVENDRA S. CHAUHAN WRIT PETITION No.51095/2015 (L-RES) BETWEEN: The Management of M/s. Le Meridien Bangalore, Owned by M/s. Mac Charles (I) Ltd., A Company registered under the Companies Act, 1956, Having its registered office at P.B.No.174, No.28, Sankey Road, Bangalore - 560 052, Rep. by its Company Secretary and VP - Finance: Mr. M.S. Reddy. Petitioner (By Sri B.S. Satyanand, Advocate) The State of Karnataka, By its Principal Secretary, Labour Department, Vikas Soudha, Bangalore - 560 001. AND:

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3. M/s. Karnataka Star Hotels The Asst. Labour Commissioner, Region Division - II, Karmika Bhavan, Bannerghatta Road, Bangalore - 560 029. Employees Union, Having its office at 2 No.6, Sirur Park, Seshadripuram, Bangalore - 560 020. Rep. by its Unit General Secretary. Respondents (By Sri K.B. Narayana Swamy, Advocate for R-3, Sri R.B. Sathyanarayana Singh, AGA for R-1 and R-2) This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash or set aside the impugned order of reference dated 6.1.2015 vide Annexure-R, issued by the R-1. This writ petition coming on for orders this day, the Court made the following:

ORDER

The petitioner, the Management of M/s. Le Meridien Bangalore, has challenged the reference, bearing No.KE684IDM2014 dated 6.1.2015, issued by the State of Karnataka.

2. Briefly the facts of the case are that the petitioner is engaged in the hotel industry, and is established under the name and style of Le Meridien Bangalore. According to the petitioner, it has employed about 400 employees. It has been functioning as a hotel in Bangalore for the last thirty years. On 5.2.2011, the Karnataka Star Hotels Employees Union, the respondent No.3, issued for the termination of wage settlement from April 2008 to March 2011. It further informed the petitioner that the alleged members of the trade union have authorized the trade union to hold negotiations with the petitioner - Company in respect of the 3 wage settlement for the period from 2011 to 2014. Having received the said intimation, on 23.2.2011 the petitioner replied to the same. The petitioner clearly informed the respondent No.3 that on a request made by the respondent No.3 by its letter dated 7.2.2007, the trade union was de-recognized for the purpose of negotiating with the petitioner. For, the respondent No.3 was no longer representing the majority of the workmen. Thus, it had become a minority trade union.

3. Notwithstanding the intimation sent by the petitioner to the respondent No.3, on 30.3.2011 the respondent No.3 submitted a charter of demands for the period from 2011 to 2014 to the petitioner. On 14.10.2011, the respondent No.3 raised an

industrial dispute as far as wage settlement was concerned.

4. Upon the industrial dispute being raised by the respondent No.3, the Assistant Labour Commissioner, the respondent No.2, issued a notice to the petitioner calling upon it to submit its objections. Immediately, on 13.12.2011, the petitioner submitted its objections. It clearly stated that since the respondent No.3 no longer represented the interest of 4 majority of workmen of the petitioner, it could not espouse the cause of the workmen. Moreover, the petitioner expressed its inability to meet the demands mentioned in the charter of demands. Considering the stand taken by the petitioner and the respondent No.3, eventually the respondent No.2, the Assistant Labour Commissioner, submitted a failure report to the Government. By order dated 6.1.2015, the Government made the reference to the learned Labour Court. Hence, this petition before this Court.

5. Mr. B.S. Satyanand, the learned counsel for the petitioner, has raised the following pleas before this Court: firstly, Section 10(1) and 12(5) of the Industrial Disputes Act, 1947 (the Act for short) have to be read together. According to Section 10 of the Act, where the Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a Labour Court. Thus, the Government is required to formulate the opinion. Moreover, under Section 12(5) of the Act, if the Government is satisfied after considering the failure report submitted by the Conciliation Officer under Section 12(4) of the Act, then it may make such reference to the Labour Court. Thus, the Government 5 is required to arrive at a satisfaction. However, a satisfaction cannot be based solely upon the failure report submitted by the Conciliation Officer under Section 12(4) of the Act. In order to buttress his plea, the learned counsel has relied on the case of State of Bombay v. K.P. Krishnan and others (AIR 1960 SC1223. According to the learned counsel, in the said case, the Apex Court has analyzed the scope of Section 12 of the Act. The Honble Supreme Court has clearly opined that the failure report cannot be the sole criteria for arriving at a satisfaction by the Government. In fact, the Government is equally required to consider the other relevant facts and material, which may come to its notice or may be brought to its notice. According to the learned counsel, the relevant facts can only be brought to the notice of the Government, if an

opportunity of hearing is given to the parties. However, in the present case, despite the fact that the petitioner had taken a stand that the respondent No.3 was no longer representing the majority of the workmen, as it was a minority trade union, this relevant fact could not be brought to the notice of the Government by the petitioner, as no opportunity of hearing was given to the petitioner. 6 6. Secondly, according to Section 10(2) of the Act, where the parties apply for a reference, the appropriate Government is required to satisfy that the persons applying for reference represent the majority of the party. Thus, the status of the party is a crucial factor to be considered by the Government. However, as no opportunity of hearing was given to the petitioner, this fundamental factor could not be brought to the notice of the Government. Therefore, the Government has referred the dispute without considering the essential and fundamental factors. Hence, the reference deserves to be set aside by this Court.

7. On the other hand, Mr. K.B. Narayana Swamy, the learned counsel for the respondent No.3, has vehemently pleaded that the architecture of Section 12 of the Act clearly reveals that Section 12(4) of the Act requires the Conciliation Officer to send his report, as soon as practicable, after the close of the investigation. It further imposes a duty upon the Conciliation Officer to state full facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. According to the learned counsel, both the parties are entitled to place their respective position before the 7 Conciliation Officer. Moreover under Section 12(5) of the Act, the Government is required to reach its satisfaction solely on the basis of the failure report. If after consideration of failure report, the Government is satisfied that the dispute requires to be referred to the Labour Court, it may do so. However, there is no requirement under Section 12(5) of the Act that prior to making the reference, the parties need to be heard. In order to buttress this plea, the learned counsel has relied on the case of Sultan Singh v. State of Haryana and another [(1996) 2 SCC66, wherein the Honble Supreme Court has opined that an opportunity of hearing need not be afforded to the employer, if the Government makes a reference to the Labour Court. Therefore, according to the learned counsel, reference made by the Government was legally valid. Hence, it need not be disturbed by this Court.

8. Heard the learned counsel for the parties, and perused the impugned reference made by the Government.

9. The two issues before this Court are, whether while making a reference, the Government has to reach its satisfaction solely on the ground of failure report submitted by the 8 Conciliation Officer under Section 12(4) of the Act, or not?. Or whether the Government can consider other material facts which may be germane to the making of reference to the Labour Court, or not ?.

10. The issue is no longer res integra as the said issue had been answered by the Honble Supreme Court in the case of K.P. Krishnan and Others (supra). The Constitution Bench of the Honble Supreme Court has opined as under:

11. The next point to consider is whether, while the appropriate Government acts under s. 12(5), it is bound to base its decision only and solely on a consideration of the report made by the conciliation officer under s.12(4). The tenor of the High Court's judgment may seem to suggest that the only material on which the conclusion of the appropriate Government under s.12 (5) should be based is the said report. There is no doubt that having regard to the background furnished by the earlier provisions of s.12 the appropriate Government would naturally consider the report very carefully and treat it as furnishing the relevant material which would enable it to decide whether a case for reference has been made or not; but the words of s.12(5) do not suggest that the report is the only material on which Government must base its conclusion. It would be open to the Government to consider other relevant facts which may come to its knowledge or which may be brought to its notice, and it is 9 in the light of all these relevant facts that it has to come to its decision whether a reference should be made or not. The problem which the Government has to consider while acting under s.12(5)(a) is whether there is a case for reference. This expression means that Government must first consider whether a prima facie case for reference has been made on the merits. If the Government comes to the conclusion that a prima facie case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference. The question as to whether a case for reference has been

made out can be answered in the light of all the relevant circumstances which would have a bearing on the merits of the case as well as on the incidental question as to whether a reference should nevertheless be made or not. A discretion to consider all relevant facts which is conferred on the Government by s.10(1) could be exercised by the Government even in dealing with cases under s.12(5) provided of course the said discretion is exercised bona fide, its final decision is based on a consideration of relevant facts and circumstances, and the second part of s.12(5) is complied with.

13. It would, therefore, follow that on receiving the failure report from the conciliation officer Government would consider the report and other relevant material and decide whether there is a case for reference. If it is satisfied that there is such a case for reference it may make a reference. If it does not make a reference it shall 10 record and communicate to the parties concerned its reasons therefore.

(Emphasis added)

11. Thus, according to the Constitution Bench, the Government is not required to reach its satisfaction solely on the basis of the failure report submitted by the Conciliation Officer. In fact, the Government is also required to consider other relevant material. The other relevant material either comes to the knowledge of the Government, or it may be brought to the knowledge of the Government. The use of the words brought to the knowledge of the Government necessarily require that the said relevant material has to be brought to the notice of the Government by either of the parties involved in the industrial dispute. However, in case the parties are not given chance of hearing, then the material facts cannot be brought to the notice of the Government. Thus, it is imperative that before the Government decides to make a reference, it must give chance to both the parties to place relevant materials before it.

12. According to Section 10(2) of the Act, before a reference can be made, the Government has to be satisfied that the person applying for making of the reference represents the 11 majority of each party. Thus, an essential factor to be considered by the Government is whether the trade union represents the majority

workmen, or not.

13. It was the consistent stand of the petitioner that the trade union, the respondent No.3, was not representing the majority of the workmen. For the trade union itself had sent a letter to the petitioner clearly stating that it no longer represents majority of the workmen. Despite the fact that the petitioner has been constantly voicing this plea, the Government has not considered the said plea. The Government has, thus, failed to consider the relevant material with regard to the said plea before making the reference.

14. In order to see whether the plea taken by the petitioner before the learned Labour Commissioner was noticed in the failure report, or not, this Court had directed the learned Government Advocate to produce the same before this Court. Consequently, the failure report has been produced before this Court. The same has been taken on record.

15. A bare perusal of the failure report clearly reveals that the learned Labour Commissioner has not noticed the fact that 12 the petitioner had claimed that respondent No.3 was stranger to the entire dispute as the respondent No.3 was no longer representing the majority of the workmen. The learned Labour Commissioner has submitted the failure report inter alia on the ground that due to adamant attitude of both the parties, the conciliation proceedings have been failed. Therefore, the fact that the petitioner was pleading that respondent No.3 does not represent the interest of the majority of the workmen was not even brought to the notice of the Government through the failure report. Thus, a crucial and cardinal fact was not within the knowledge of the Government when it made the reference. Therefore, the Government has not reached the satisfaction on the basis of relevant facts.

16. The learned counsel for respondent has certainly relied on the case of Sultan Singh (supra), in order to plead that before the Government makes a reference to the Labour Court, it need not give an opportunity of hearing to the parties. However, in the case of Sultan Singh, a case decided by the Honble Division Bench of the Supreme Court, the decision of the Constitution Bench in the case of K.P. Krishnan and Others (supra) was not brought to its notice. Since the issue

had 13 already been settled by the Constitution Bench in the case of K. P. Krishnan and others (supra), the decision in the case of Sultan Singh (supra) is not binding on this Court.

17. Therefore, for the reasons stated above, this petition is hereby allowed. The reference dated 06.01.2015, is set aside. The Government is directed to consider the failure report submitted by the learned Labour Commissioner, and to give an opportunity of hearing to the parties to place the other relevant material before it. The Government is granted one months time to decide whether reference should be made, or should not be made under Section 10 of the Act, from the date of receipt of certified copy of the order. The parties are directed to appear before the concerned authorities on 27.11.2017. MD/ Np/- Sd/- JUDGE