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Association of Engineering Workers Vs. Indian Smelting and Refinery Co. Ltd. and Others

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Court : Mumbai

Decided On : Jan-17-2000

Reported in : 2000(1)ALLMR485; 2000(3)BomCR75; (2000)IILLJ340Bom; 2000(3)MhLj535

Judge : Dr. B.P. Saraf and; V.C. Daga, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 7, 10(1), 12(5), 33 and 39; [Trade Unions Act, 1926](#); [Companies Act, 1956](#); [Constitution of India](#) - Articles 14 and 226

Appeal No. : Appeal No. 357 of 1995 in Writ Petition No. 221 of 1995

Appellant : Association of Engineering Workers

Respondent : Indian Smelting and Refinery Co. Ltd. and Others

Advocate for Def. : C.J. Sawant, Sr.C. and ;M.H. Doshi, Adv.

Advocate for Pet/Ap. : S.J. Deshmukh and ;N.M. Ganguli, Adv.

Judgement :

ORDER

V.C. DAGA, J.

1. This appeal is directed against the order of the learned Single Judge dated 7th February 1995 passed in Writ Petition No. 21 of 1995, dismissing the writ petition challenging the order passed by the President, Industrial Court, Maharashtra Bombay, (hereinafter called respondent No. 2 for short) in Misc. Application (T.R-II) Nos. 55, 56, 57, 58 and 59 of 1994) in Reference (I.D.A) 328, 437, 462, 854, 828 of 1988.

2. The appellant original writ petitioner is a Trade Union registered under the [Trade Unions Act, 1926](#). The respondent No. 1 is a Company duly registered under the [Companies Act, 1956](#). The industrial disputes raised by the appellant-Union pertain to the reinstatement of about 500 workmen who are the members of the appellant Union, who according to the appellant-Union were illegally and wrongfully terminated from service of the respondent No. 1 Company. The State Government by 5 different orders passed under section 12(5) read with section 10(1)(c) of the Industrial Disputes Act, referred the said disputes for adjudication to different Labour Courts in Bombay constituted under section 7 of the Industrial Disputes Act.

3. The aforesaid references were numbered as Reference (I.D.A) Nos. 328, 437, 462, 828 and 854 of 1988. The appellant filed statement of claim and in turn the respondent No. 1 company also filed its written statement. Since the facts leading to the termination of services of the said workmen were common and the reliefs claimed were identical, the appellant applied for transfer of the references to one Court only. The then President of the Industrial Court in exercise of the powers conferred under section 33-B read with section 39 of the Industrial Disputes Act, withdrew all the references from the respective Labour Courts and placed them for disposal according to law before the 1st Labour Court before whom the first reference was pending.

4. All the aforesaid references were heard in common. In all those references, appellant led common evidence. The evidence of the appellant was in progress. At this juncture, certain unfortunate events have taken place during the trial of reference proceedings, details of which need no reference for decision of the present appeal. However, the said unfortunate happenings resulted in moving

separate applications for transfer of the references from 1st Labour Court to any other Labour Court in Mumbai at the instance of the respondent No. 1. All the applications were separately numbered. The appellant union opposed all the applications and prayed for rejection thereof with costs.

5. The respondent No. 2 the learned President, Industrial Court called for a report from the learned Judge of the 1st Labour Court. In the report amongst others he said that he has no objection for transfer of the matters from his Court to the file of any other Labour Court. The said report is at Ex. 9.

6. The appellant Union during the course of trial of the said transfer applications raised the preliminary objection as to the maintainability of the transfer applications on the ground that the President, Industrial Court has no power to try and decide the said transfer applications. The learned President of the Industrial Court, after considering the provisions of section 33-B read with section 39 of the Industrial Disputes Act, and consequent notification dated 12-3-1957 issued by the Labour Court and Social Welfare Department of the then State Government in the name of the Governor of Bombay, which had been published in the Government Gazette, Part I dated 31-7-1957, held that the President of Industrial Court has a jurisdiction to transfer any proceeding from one Labour Court to any tribunal or any other Labour Court.

7. The President, Industrial Court, Bombay, after considering the submissions advanced by the parties recorded its findings in paras 48 and 49 of the judgment, the text of which is reproduced hereinbelow :

48. 'Taking an overall picture what I see through is that the unfortunate happenings could have been and should have been avoided. Sentimental approach may put the concerned on wrong track. Taking a considerable and reasonable view I am of the confirmed opinion that conclusions of bias, predetermination, loss of faith and the like are not acceptable for want of material on record.

49 In the final analysis, I am of the view that no case is made out for departure from normal rule. In these premises, I would have rejected the prayer but it is

amply clear that allegations of serious nature are made against the Judge. I can visualize the situation to what sufferance he must have been put and in what embarrassing position he is. In the report submitted which was for from the Judge, he has given his no objection for transfer of the matter from his file. To relieve the Judge from present and future embarrassment arising out of the allegations made against him, I feel that the reference can be administratively transferred from his Court.'

The President, Industrial Court thus vide above order dated 31-1-1995 withdrew all the 5 references from the file of the 1st Labour Court, Bombay and transferred all the reference proceedings to the file of 7th Labour Court, Bombay, from the stage where they were.

The aforesaid order dated 31-1-1995 was the subject matter of challenge by invoking writ jurisdiction under Article 226 of the [Constitution of India](#). The said writ petition was dismissed by the learned Single Judge vide his order dated 7th February 1995, finding no fault with the discretion exercised by the President of the Industrial Court, Bombay while transferring the reference proceedings.

The aforesaid order of the learned Single Judge is the subject matter of challenge in this appeal.

8. We have extensively heard Shri S.J. Deshmukh, the learned Counsel for the appellant and Shri C.J. Sawant, learned Senior Counsel for the respondent Company. There is no serious challenge to the powers of respondent No. 2. However, it is contended by the learned Counsel for the appellant that the President, Industrial Court, Bombay could not have passed an order transferring all the references from the 1st Labour Court to the 7th Labour Court, Bombay, especially when he found that case of bias and predetermination or loss of faith has not been made out by the respondent No. 1 Company. The learned Counsel for the appellant severely criticised the approach adopted by the President, Industrial Court, while transferring the reference proceedings and contended that the discretion has been exercised wrongly, arbitrarily, capriciously in violation of Article 14 of the [Constitution of India](#). As such, he submitted that the order transferring reference proceedings was bad and illegal. He also contended that the

impugned order of the learned Single Judge is unsustainable in the eye of law as the settled principles of law have been ignored by the learned Single Judge while deciding the writ petition.

9. The learned Senior Counsel for the respondent Company contended that the order passed by the President, Industrial Court, Bombay, being discretionary order, the learned Single Judge was perfectly justified in refusing to interfere with the said order. As such, in the submissions of the respondent No. 1 the order of the learned Single Judge need not be interfered with and prayed for dismissal of the appeal with costs.

10. After giving thoughtful consideration to the rival submissions, we find that the appeal is against the order refusing to interfere with the exercise of discretion exercised by the respondent No. 2. In such appeal the jurisdiction of the Appellate Court is limited. The Appellate Court is not expected to interfere with the exercise of discretion of the Court and substitute its own discretion except where the discretion has been exercised perversely.

In U.P. Co-operative Federation Ltd, v. Sunder Brothers, Delhi, : AIR 1967 SC249 , the Apex Court observed as under :

'In dealing with the matter raised before it at the appellate stage the Appellate Court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the Appellate Court would have taken a different view may not justify such interference with the trial Court's exercise of discretion. If it appears to the Appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts, it would be open to the Appellate Court to interfere with the trial Court's exercise of discretion.'

While keeping the aforesaid parameters in mind, which are well applicable even to the appeals arising out of exercise of writ jurisdiction, we have examined the impugned order. We are of the considered opinion that the President of the

Industrial Court rightly observed that the allegations in the transfer applications are not sufficient and do not warrant an order of transfer but however felt that the learned Presiding Officer has been unduly affected by the allegations levelled against him as would be evident from his report. In view of this respondent No. 2 rightly exercised the discretion considering the well recognised principle that justice should not only be done but should appear to have been done. As such, the learned Single Judge also rightly refused to interfere with the discretion exercised by the President, Industrial Court, Bombay. We concur with the approach adopted by the learned Single Judge and find no fault with the impugned order.

11. At this juncture, it would be useful to make a reference to a reported judgment of the Apex Court in the case of Pushpa Devi Saraf v. Jai Narain Parasrampur & others, : AIR 1992 SC1133 . The facts of the said case are more or less similar to one with which we are dealing herein. In the said case before the Apex Court, allegations made against the Presiding Officer were not proved. However, report of the Presiding Officer was called for, wherein allegations made against him were made known to him. In such circumstances, the Apex Court found that no prima facie case for transfer has been made out but the learned Presiding Officer has been unduly affected by the allegations levelled against him. As such, the Apex Court directed transfer of the suit in the interest of the Presiding Officer himself in the following words :

'We, however, feel that the learned Presiding Officer has been unduly affected by the allegations levelled against him, as would be evident from his report. In this view of the matter, we are inclined to think that in the interest learned Presiding Officer himself the suit may be sent to another Court.'

The President, Industrial Court while exercising discretion has adopted the above similar approach, as such, no fault can be found with the exercise of discretion exercised by the President, Industrial Court, Bombay. The learned Single Judge rightly affirmed the said approach as such the impugned order of the learned Single Judge needs no interference. Appeal is without any merits.

As such, we dismiss the appeal, Parties to bear their own costs.

12. Appeal dismissed.

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