

In Re: Deepak Industries

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SooperKanoon Citation : sooperkanoon.com/863800

Court : Kolkata

Decided On : Jun-12-1987

Reported in : [1989(58)FLR64],(1994)IIILLJ1014Cal

Judge : Susanta Chatterji, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10 and 10(1)

Appellant : In Re: Deepak Industries

Advocate for Def. : S.K. Dutta and ;Chabbi Chakraborty, Advs. for Respondent No. 2

Advocate for Pet/Ap. : Bhaskar Gupta and ;Samir Chakraborty, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Susanta Chatterji, J.

1. The present writ application has been filed seeking the reliefs to withdraw, revoke, recall and/or cancel the impugned order of reference bearing No. 2797/IR underlying IR/ML 16/84 dt. December 20, 1986 and for other consequential orders in the manner as stated in the writ application. It is alleged that the Respondent No. 3 was appointed in the Production Control Department of the petitioner

company. It is further alleged that petitioner company as a unit known as New Allenbery Works appointed the Respondent 3 in the Junior Management Cadre and the terms and conditions of the appointment are contained in the letter dated 23rd December 1980 and 1st July, 1981. By letter dated 15th May, 1982 the service of the Respondent 3 was terminated with effect from May 15, 1982. The respondent 3 instead of accepting his termination complained about the same to the Labour Commissioner (South), Government of West Bengal, Labour Department whereupon a conciliation proceeding was initiated. The conciliation Officer being satisfied that the Respondent 3 was not a workman covered under the Industrial Disputes Act did not initiate any conciliation proceeding and submitted his reason therefor. A letter written by the Deputy Labour Commissioner, West Bengal dated 15th March, 1984 addressed to the Respondent No. 3 was forwarded to the petitioner company under Memo No. S/1500/489/82 dated 15-3-1984 informing, inter alia, that since the enquiry reveals that the Respondent 3 was working as a production coordinator in a supervisory capacity at the time of termination of service, and was drawing salary exceeding Rs. 1000/-per month, no action under the Industrial Disputes Act would be taken in the matter. A copy of the said letter has been annexed by letter 'D' to the writ petition. On or about 20th July, 1985, the Assistant Labour Commissioner, Government of West Bengal again called upon the petitioner company to submit fresh comments on the same issue raised by the Respondent 3, A copy of the notice along with a copy of the purported representation of the Respondent 3 was enclosed. The copies of the same have collectively been filed marked as 'E'. The petitioner duly appeared before the Assistant Labour Commissioner and the alleged conciliation proceeding and submitted all the contentions as stated earlier. However, on or about 17th January 1987, the petitioner was surprised to find the purported order dated December 20, 1986 whereby the petitioner was informed that the Respondent No. 1 being of opinion that allegedly an Industrial Dispute exists between the parties relating to the issue whether the termination of the service of the Respondent 3 with effect from May 5, 1982 was justified or not. The said impugned order passed by the Respondent 1 was communicated by the Respondent No. 2 and the same is alleged to be arbitrary, illegal, mala fide and without jurisdiction. The petitioner challenged the same by filing the present writ

application. It is alleged that there was no fresh material as none could be on the basis whereof, the Respondent No. 1 could have come to a different conclusion as has been purported to be done by the impugned order. There has been no material challenged in the factual position as existed when the earlier order dated March 15, 1984 was passed refusing to pass an order of reference on the same issue. The impugned order has been passed in gross violation of principles of natural justice and subsequent order of reference is inherently defective and the same cannot be sustained in the facts and circumstances of the case.

2. Mr. Bhaskar Gupta, the learned counsel, appearing for the petitioner company has mainly argued that reference of disputes to Boards, Courts or Tribunals may be made by the appropriate Government where the Government is of opinion that an Industrial Dispute exists or is apprehended by the order in writing. Section 10 of the Industrial Disputes Act is not a mechanical process. There must be application of mind and there must be materials on record to form a proper opinion. There must not be subjective satisfaction only. There must be objective manifestations. In support of his contention he has relied upon a reported decision reported in *Western India Watch Co. Ltd. v. Western India Watch Company Workers' Union*, : (1970) IILLJ256SC . The earlier refusal by the Government to make a reference and consideration of the matter at the latest stage is still competent or not. The said decision holds, inter alia, that in the light of the nature of the functions of the Government and the object for which the powers conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a re-consideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it re-considers its earlier decision, it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes, must be with regard to that and no other industrial dispute. Regard being had to the said decision Mr. Gupta has emphasized that he does not argue that the Government has no power to refer the dispute for the second time but all that he submits is that such a consideration must be based upon the materials on record. Next, he referred to a case reported in *Indian Telephone Industries Limited v. State of Karnataka*, (1978) 1 LJ 544 : (1978 LIC 1779) (Kant). In para 31, it appears that

the decision of the Government to refer the dispute without the application of the mind is based on irrelevant consideration and on irrelevant material. The ratio of the decision is that the decision of the Government whether an industrial dispute exists or an industrial dispute is apprehended, and if one exists or is apprehended whether it is expedient to make a reference or not so long as the decision is based on relevant considerations and material, is final, and cannot be sent for examination by this Court as if it is an appeal. However, if the decision of the Government is based on no material or even if there is material the Government has not applied its mind to such material or if it has passed its decision on irrelevant and extraneous considerations that are relevant the Court, on exercise of its powers under Article 226 of the Constitution can undoubtedly interfere with such a decision of the Government. The learned counsel has further referred to a decision reported in 1981 LIC NOC 91 (Cal). The note indicates that (there were) two successive refusals to refer matter for adjudication and there were no further materials or extenuating circumstances subsequent to refusal. The subsequent order of reference was improper, illegal and without jurisdiction. By drawing attention of the Court to a decision reported in *M.A. Rasheed v. State of Kerala*, : [1975]2SCR93 Mr. Gupta has argued that where powers are conferred on public authorities to exercise the same when 'they are satisfied' or when 'it appears to them' or when 'in their opinion' a certain state of affairs exists; or when powers enable public authorities to take 'such action as they think fit' in relation to a subject-matter, the courts will not readily differ to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicted. Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The courts enquire whether a reasonable man could have come to the decision in question without mis-directing himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the courts own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis. It is concluded by the counsel that in the instant case there is no factual basis to form an opinion to

refer the matter subsequently to the Tribunal for adjudication of the issue suggested by the workman himself.

3. Mr. Dutt has argued referring to the scope of Section 10 of the Industrial Disputes Act. According to him, the adjudication of any dispute has nothing to do with the reference. Any dispute as to the status of the parties, ambit of the Industrial Disputes and justification of the cause have got to be considered by the Tribunal. He has referred to a decision reported in *M.P. Irrigation Karmachari Sangh v. State of M.P.* : (1985)ILLJ519SC wherein it appears that while conceding a very limited jurisdiction to the State Government to examine competent frivolousness of the demands, it is to be understood as a rule that adjudication of demands made by the workman should be left to the Tribunal to decide. Section 10 of Industrial Disputes Act permits the Appropriate Government to determine whether dispute 'Exists or is apprehended' and they refer it for adjudication of merits. The demarcated functions are (i) reference; (ii) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of power of quasi-judicial Tribunal by an administrative authority viz. the Appropriate Government. There may be exceptional cases in which the State Government may, on a proper examination of the demands come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. They should be very slow to attend an examination the demand with regard to decline reference and courts will always be vigilant whenever the Government attempts to usurp powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so, would be to render Section 10 and Section 12(5) of the Industrial Disputes Act, nugatory.

4. Considering the submissions made by the learned lawyers of the respective parties, it appears that the only point has been raised as to whether there are materials on record to justify the Appropriate Government to refer the matter to Tribunal for effective adjudication after refusing to refer the dispute in a previous action. The power of the Government to do the same is not challenged. The question is as to whether there is any factual basis to form an opinion. Although the State has not come forward to oppose the petitioner's application or filed any

affidavit-in-opposition or produce any material by production of documents at the time of trial, yet it will appear from the averments made in the writ petition itself that the workman made a fresh representation stating various facts and circumstances. The comments of the management were also made alleging, inter alia, that the employee concerned is not a workman to be covered by the provisions of Industrial Disputes Act to obtain any reliefs by any adjudication. All these papers have admittedly been filed before the competent officers of the Appropriate Government while the reference was made for the second time. It cannot be argued that by a mechanical process and without any application of mind, the reference has been made in the form of a service of a post office. There are materials on record and obviously there are objective manifestations. The machinery under Section 10 to refer the dispute cannot usurp the function of a Tribunal to adjudicate whether the case of the Management is genuine or the case of the employee is bona fide. It is open to the employer to prove by referring to the letter of appointment before the Tribunal that the employee is not a workman within the definition of 'workman' in Industrial Disputes Act, and there is nothing wrong on the part of the employer to terminate the services. It is equally open to the employee to satisfy the Tribunal to obtain reliefs if he is otherwise entitled in accordance with law. All these questions are left open to be decided by the tribunal. It has to be seen only from the materials on record as to whether there exists an Industrial Dispute or the same is apprehended to exist. Such materials being present in the instant case, the second reference is certainly justified since the Government has power to form an opinion to refer the dispute to Industrial adjudication.

5. Regarding being had to the materials on record this court feels that the impugned order of reference is neither irregular nor illegal. Accordingly, this court is not inclined to interfere with the impugned order.

6. The writ petition is thus rejected, without any order as to the costs.

7. There will be a stay of operation of this order for a period of a fortnight from date.

