

(1955) 03 AHC CK 0012

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 591 of 1953

Swadeshi Cotton Mills Co. Ltd.

APPELLANT

Vs

State Industrial Tribunal, U.P.
and Others

RESPONDENT

Date of Decision: March 30, 1955

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 3, 4

Citation: AIR 1955 All 549

Hon'ble Judges: V. Bhargava, J

Bench: Single Bench

Advocate: R.S. Pathak and S.N. Kakkar, for the Appellant; S.K. Verma and A.G., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Bhargava, J.

The Swadeshi Cotton Mills Company, Limited, Kanpur, filed this petition under Article 226 of the Constitution, praying for the issue of a writ in the nature of "prohibition" against opposite party 1, the State Industrial Tribunal, U. P., prohibiting it from proceeding further with the industrial dispute case No. 78 of 1953 pending before that Tribunal, a writ in the nature of "certiorari" quashing the proceedings in that industrial dispute case and a writ in the nature of "mandamus" against the State of Uttar Pradesh opposite, party 5, directing it to withdraw its notification No. 2078 (LC)XVIII-LA-T-I7673(KR)/53 dated 25-6-1953, by which an industrial dispute between the petitioner company and opposite party 6, the Suti Mill Mazdoor Union, Kanpur, was referred for adjudication by the State of Uttar Pradesh to the State Industrial Tribunal, U. P.

2. The case as put forward by the petitioner company, as that, on 7-11-1951, an illegal strike was commenced in the mills operated by the petitioner company. Thereupon the company warned the participants in the strike that it was illegal and also informed them of the consequences that would follow this illegal strike. The strikers paid no heed to this warning nor to the advice given to them by the labour Inspector and the Labour Conciliation Officer and continued their strike up to 23-11-1951.

During this strike, acts of violence and unruly behaviour were committed. "Work was resumed on the advice of the Labour Commissioner and then charge sheets were submitted against 55 workmen, who had taken part in the strike, for various acts of misconduct in connection with the strike. After written explanations had been submitted and an enquiry had been made, 30 workmen, who were adjudged guilty of various types of serious misconduct, were dismissed under the standing orders. The remaining 25 workmen were allowed to rejoin their duties after punishment under the standing orders.

Opposite party 6, the Suti Mill Mazdoor Union, Kanpur, then made a representation on behalf of those 30 dismissed workmen to the Conciliation Officer, Kanpur, stating that an industrial dispute had arisen as a result of the dismissal of those 30, workmen and asking for the constitution of a Conciliation Board. The Conciliation Board was constituted and it commenced its proceedings on 10-1-1952. No settlement having been arrived at, the Conciliation Board submitted its report to the State Government.

The Government of Uttar Pradesh sent for the representatives of the petitioner company and discussed the entire position with them. Thereafter in May 1952, the Government communicated its decision in writing, through the Labour Commissioner's office, to opposite party 6, intimating that the Government considered it inexpedient to refer the dispute for adjudication as no case had been made out. This decision was also communicated to the representatives of the petitioner company.

Subsequently, on 7-2-1953, opposite party 6 again applied to the Conciliation Officer for the constitution of a Conciliation Board for settlement of the same dispute. The proceedings for conciliation were commenced afresh and were continued despite the protest of the petitioner company that the repetition of the conciliation proceedings was not permissible when the matter had been finally disposed of about a year earlier.

Subsequently, the State Government issued a notification dated 25-6-1953, mentioned above and referred the industrial dispute for adjudication to the State Industrial Tribunal and, on 30-6-1953, the petitioner company received a notice from the State Industrial Tribunal, U. P. that 10-7-1953 had been fixed in the case. Subsequently the case was adjourned to 15-7-1953. On 13-7-1953, this petition was

presented in this Court and, on 14-7-1953, an interim order was passed, prohibiting the State Industrial Tribunal U. P., from proceeding with case No. 78 of 1953 pending before it until further orders of this Court.

3. The petition has been contested by all the opposite parties but no counter-affidavit has been filed on behalf of opposite parties 1 to 5. A counter-affidavit was filed only on behalf of opposite party 6, the Suti Mill Mazdoor Union, Kanpur, and, in reply to that counter-affidavit, a rejoinder affidavit was filed on behalf of the petitioner company.

Further, two amendment applications were presented by the petitioner company for adding new grounds, particularly, in view of subsequent general orders issued by the State Government in its notifications No. U-464(LL)/XXXVI-B-257(LL)-1954, dated 14-7-1954, and No. U. 686- (LL)/XXXVI(B)-257(LL)-1954 dated 8-9-1954. These amendment applications were allowed and the grounds added in them have, therefore, also to be considered.

4. The main grounds, that were taken in this petition originally, are now all covered by a decision of a Division Bench of this Court in --- "British India Corporation, Limited, Kanpur v. The State Industrial Tribunal U. P.", Writ Petns. Nos. 330 and 331 of 1953: AIR 1955 NUC 1732 (A). The contention of the petitioner company that the reference to the State Industrial Tribunal U. P. was void because the general order dated 15-3-1951, constituting that Tribunal had no statutory force does not arise in view of that decision.

In fact, the decision in that case being applicable, it has to be held that, in this case also, there is now before the State Industrial Tribunal, U. P., a fresh reference with effect from 8-9-1954, of the Industrial dispute which is to be adjudicated upon in accordance with the notification dated 14-7-1954, mentioned above. The points, that are being held against the petitioner company on the ground that they have already been decided by the Division Bench of this Court in the cases referred to above, need not again be discussed by me. There are only two new points that have been urged by learned counsel before me in support of this petition and I proceed to deal with them alone.

5. The first point, that has been urged by learned counsel, is that, according to the decision of the Division Bench in the writ petitions mentioned above, the dispute now pending before the State Industrial Tribunal, U. P., is a now dispute referred to that Tribunal by the notification of 8-9-1954, and that notification does not comply with the requirements of Section 4, U. P. Industrial Disputes Act, 1947, so that that notification is void. u/s 4, U. P. Industrial Disputes Act, an order made u/s 3, referring an industrial dispute for adjudication must specify, as far as may be practicable, the matters, upon which adjudication is necessary or desired, provided that

(1) the State Government may, of its own motion or at the instance of the adjudicating authority, add to or amend or vary the matters so specified;

(2) the State Government may, with a view to specifying the said matter, direct the adjudicating authority to make a preliminary enquiry into the nature of the dispute and postpone specification for such time as may reasonably be required.

It is submitted on behalf of the petitioner company that the order of 8-9-1954 did not specify matters upon which adjudication was necessary or desired and, consequently, it did not comply with the requirements of Section 4 and was, therefore, void and ineffective. It appears to me that this contention of learned counsel for the petitioner company ignores the fact that the matter, upon which adjudication was necessary or desired, had been specified in the earlier notification dated 25-6-1953, by which the reference was made to the State Industrial Tribunal, U. P., for being adjudicated upon in accordance with the general notification dated 15-3-1951, and that that earlier notification must be read as a part of this later notification dated 8-9-1954.

The notification of 8-9-1954, did not separately mention the industrial disputes which were covered by that notification. It only stated that the disputes, which had been referred earlier to the State Industrial Tribunal under the notification of 15-3-1951, were to be deemed to be disputes referred under the general notification dated 14-7-1954.

It was held by the Division Bench in the cases cited above that this amounted to a fresh reference of those very disputes which had been referred earlier by the notifications issued u/s 3 for adjudication in accordance with the general notification dated 15-3-1951. The notification of 8-9-1954, has, therefore, to be read with all earlier notifications by which the disputes pending before the State Industrial Tribunal on 8-9-1954, had been referred to that Tribunal initially.

Those earlier notifications are, therefore, to be deemed to be parts of the notification of 8-9-1954. For the purpose of making an industrial dispute the subject matter of a fresh reference on 8-9-1954, the notification, of that date as well as the earlier notification, by which the dispute was originally referred to the State Industrial Tribunal, are to be treated as one single notification though they were published on different dates as different notifications.

They have to be read as one single notification. When a dispute is actually referred, all that is required by Section 4 is that the matters referred should be specified. The specification may be made either by giving the details in that order itself, or, by making some earlier notification, which had already received adequate publicity, a part of the order referring the dispute. If the latter course is chosen, it has still to be held that the order, referring the dispute, for adjudication does specify the matters for adjudication.

There is, of course, no doubt that the earlier notification of 25-6-1953, did fully specify the industrial dispute that was referred for adjudication. A copy of that notification has been filed by the petitioner company before me. The notification began as follows:

"Whereas an industrial dispute in respect of the matter hereinafter specified exists between the concern....."

Later on, the notification lays down that

"The Governor is pleased to refer the said dispute to the Industrial Tribunal which shall adjudicate on the following issue....."

The matter of the dispute is described in the following words;

Whether the management of M/S Swadeshi Cotton Mills Co., Ltd., Kanpur have unjustly and or wrongfully dismissed the workmen given in the annexure? If so, to what relief are these workmen entitled?"

A reading of the whole of this notification shows that, in the opinion of the Governor, an industrial dispute existed and that particular dispute related to the subject-matter of the-dispute mentioned at the end of the notification. Reference was, therefore, made to the existence of that dispute by using the words "an industrial dispute in respect of the matter hereinafter specified exists." That very dispute was referred for adjudication by using the words "The Governor is pleased to refer the said dispute to the Industrial Tribunal".

The issue that was to be adjudicated upon, was identical with the matter of dispute. There was, therefore, clear specification in that notification of the matter for adjudication which " was identical with the industrial dispute, the existence of which was found by the State Government and which the State Government considered necessary to refer for some of the purposes mentioned in Section 3, U. P. Industrial Disputes Act.

When the notification of 8-9-1954, was, therefore, issued, that very specification became a part of that notification, making a fresh reference of that industrial dispute for adjudication in accordance with the general order dated 14-7-1954, and there is, therefore no question of non-compliance with the provisions of Section 4. Learned counsel referred me to a decision of learned Single Judge of this Court on the point that an industrial dispute need not be identical with the matter upon which adjudication was necessary or desired and, u/s 4, it is the matter upon which adjudication is necessary or desired, which has to be specified whenever a reference in respect of an industrial dispute is made.

Even after the reference, the specification of the subject-matter for adjudication can be added to, amended or varied which clearly indicates that there is some distinction between an industrial-dispute and the subject-matter for adjudication.

This may be so in particular cases but, in the case before me, the notification of 25-6-1953, makes it perfectly clear that the only industrial dispute, that arose, was identical with the matter which was referred for adjudication and the specification in the notification, therefore, covered both, the industrial dispute itself as well as the matter for adjudication. This having become a part of the notification of 8-9-1954, that order must also be read as having specified the industrial dispute as well as the matter for adjudication. There is, therefore, no invalidity in the reference which is now pending before the State Industrial Tribunal and the State Industrial Tribunal is competent to deal with it.

6. The second point, that learned counsel has urged, is that, according to the petitioner company, the State Government, in May, 1952, once formed an opinion that it considered it inexpedient to refer the dispute for adjudication as no case had been made out. Subsequently, the State Government had no power or jurisdiction to change its view and make a reference by the notification of 25-6-1953. In this connection, attention must be paid to the language of Section 3, U. P. Industrial Disputes Act which lays down the circumstances under which an industrial dispute can be referred for adjudication.

The condition for a valid reference is that, in the opinion of the State Government, it must be necessary or expedient to do so for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment. The opinion as to this necessity or expediency for one of the purposes mentioned above has to be formed by the State Government at the time when the State Government decides to make a reference of the dispute for adjudication.

It is impossible to contend that the necessity or expediency of making a reference of a particular industrial dispute must or will remain the same at all times because, at different times different circumstances may exist. At one time, it may not be necessary or expedient to refer a particular dispute for adjudication but, at a subsequent time, it may become necessary or expedient to do so, though the dispute may be the same.

In the affidavit filed in support of the petition,, it was nowhere stated that circumstances had not changed between May, 1952, and June, 1953, the two relevant periods of time when the State Government held different views with regard to the expediency or necessity of referring the dispute for adjudication. There being no such averment in the affidavit filed in support of the petition", the State Government naturally did not file any counter-affidavit on the subject.

In the counter-affidavit filed on behalf of opposite party 6, there was an assertion that circumstances had changed and, in this connection, reference was made to the termination of some criminal case that was pending in May, 1952, and which concluded before February, 1953. In the rejoinder affidavit it was stated on behalf of

the petitioner company that the termination of the proceedings in that criminal case was not relevant and did not change the circumstances.

The opinion of the petitioner company that those criminal proceedings were not relevant and their decision did not change the circumstances cannot be accepted. It was really for the State Government to judge for itself, when forming its opinion whether there had been change of circumstances. It is even doubtful whether the State Government could have been called upon to give in Court its reasons for changing its opinion and holding in June, 1953, that it was, necessary or expedient to refer the dispute for adjudication when it had -held in May, 1952, that it was not so.

The correctness of such an opinion is not open to judicial scrutiny by Courts, as held by the Supreme Court in -- [State of Madras Vs. C.P. Sarathy and Another](#), It was also held by a Full Bench of this Court in -- "[Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others](#), that, in order to pass an order u/s 3, U. p". Industrial Disputes Act, the State Government is entitled to form its opinion on any or all material information available to it.

In the present case, the dispute had been raised afresh in February, 1953, by opposite party 6 and the criminal case, that had been pending, had been terminated and the Government had before it a fresh report "of the Conciliation Board. On these materials, the State Government came to the opinion that it was necessary and expedient, for purposes mentioned in the notification of 25-6-1953, to refer that industrial dispute for adjudication. It cannot be said that this opinion was entirely capricious or arbitrary.

Whether the opinion was rightly formed or wrongly formed is not a question which can be gone into by this Court.

This was, therefore, a case where it was not a capricious or arbitrary revision of its previous opinion formed by the State Government in May, 1952. The Government had subsequent material before it and, on its basis it came to the opinion that it was necessary to make a reference of the industrial dispute for adjudication. The order of reference was, therefore, within the competence of "the Government.

As was held by the Division Bench of this Court in Writ Petns. Nos. 330 and 331 of 1953 (All) (A), cited above, when the order of 8-9-1954, was passed, the State Government again formed the opinion afresh that it was necessary to refer this dispute once more for adjudication on that date and to lay down that it should be adjudicated upon in accordance with the order of 14-7-1954. The reference before the State Industrial Tribunal has, therefore, been competently made and the State Industrial Tribunal is competent to proceed with it.

7. The petition fails and is dismissed with costs. Opposite Parties 1 to 5 shall get Rs. 250/- each as costs and Opposite Party 6 shall get Rs. 100/-/-.