

**(1990) 08 AHC CK 0031**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 9735 of 1990

Basti Sugar Mills Co.Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Aug. 11, 1990

**Acts Referred:**

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

**Hon'ble Judges:** Binod Kumar Roy, J and R.K.Mahajan, J

**Final Decision:** Disposed Of

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### **Judgement**

1. The petitioner Company, has come up with a prayer to quash the Second Reference dated 2031990 arising out of C.B. Case No. 29 of 1989 made under Section 4K of the U.P. Industrial Disputes Act (as contained in Annexure5 to the writ petition).

2. The petitioner asserts, inter alia, that it is a company registered under the Indian Companies Act, 1956 having two units ; its unit at Walterganj is a seasonal industry and it has three kinds of workmen, namely (i) temporary, .(ii) seasonal and (iii) permanent; its Union raised an industrial dispute for two workmen, namely, Suresh Kumar Srivastava and Nagendra Prasad Singh (who have filed an impalement application) by filing a claim dated 2141989 as contained in Annexure1 which was numbered as C.B. Case No. 29 of 1989 before the Conciliation Officer, Basti; the petitioner filed its objections dated 315 1989 (as contained in Annexure2); to its objection the Union filed rejoinder dated 471989 (as contained in Annexure3) ; the Conciliation Officer heard the matter and submitted his report to the State Government which, vide its order dated 19121989 (as contained in Annexure4) after expressing its opinion that no industrial dispute exists or is apprehended declined to refer the dispute for adjudication before the Labour Court and directed the file to be consigned to the record room ; however, on receipt of the Second Reference Order issued on 2031990 (as contained in Annexure5) the petitioner came to know of it which was made without issuance of any notice to it and without assigning any

reason and thereby it is liable to be quashed."

3. The writ petition was placed before a Division Bench on 95 1990 and it was admitted. In regard to the stay application filed by the petitioner notice was issued and an interim order was passed to the effect that until further orders, further proceedings in Adjudication Case No. 29 of 1989 pending before Labour Court, Gorakhpur shall remain stayed.

4. The two workmen have filed applications for their impleadment as well as vacating the interim order along with their counter affidavit. In the counter affidavit, it has been stated, inter alia, that they were appointed as office clerks in the season 198384 and since then they have been regularly working till starting of the season of 198990 when their services were terminated against which they filed C.B. Case Nos. 2 and 3 of 1990 through their Union ; several representations were made before the officer of the factory and ultimately they were compelled to file C.B. Case No. 29 of 1989 through their Union before the Regional Conciliation Officer, Basti; that correct facts were not placed before the State Government earlier and when it came to know of the correct facts and found that the industrial dispute exists; being fully satisfied, referred the matter for adjudication ; since the Government exercised its own power in the administrative capacity, no notice was necessary while making the Reference to the Tribunal; that the question raised by the petitioner can be raised before the Tribunal itself, as held by the Division Bench decision of this Court in Champion Cycle Industries, Naini, Allahabad v. State of U.P. & Ors., AIR 1964 All 328; that these respondents, who are the actual sufferers, are necessary parties to the writ petition and in view of their nonjoinder the writ petition be dismissed with costs.

5. Miss Bharti Sapru, learned Counsel appearing in support of the Rule, contended as follows(i) in view of the observations made in Paragraph 13 of the decision of the Supreme Court in *Mis. Western India Watch Co. Ltd. v. The Western India Watch Co. Workers Union & Ors.*, AIR 1970 SC 1205, notice to the petitioner was must in the absence of which the impugned Second Reference stands vitiated and is liable to be quashed, (ii) There was no fresh material before the Government to make the Second Reference.

6. Sri Sushil Kumar Srivastava, learned Counsel appearing in support of the two workmen seeking impleadment to the writ petition, on the other hand, contended as follows :(i) True it is that the order making Reference is a nonspeaking order but it was made by the State Government after being satisfied of true and complete facts. The decision relied upon the Miss. Sapru is really against her and that the other two decisions of the Supreme Court in *Swadeshi Cotton Mills Co. Ltd. v. State Industrial Tribunal, U.P. & Ors.*, AIR 1961, SC 1381 and *Mahabir Joot Mills Ltd. Gorakhpur v. Shibban Lai Saxena & Ors.*, AIR 1975 SC 2057, militates against the contention made by Miss Sapru. (ii) The writ petition is bad for nonimpleadment of necessary parties, namely, the Union or these workman inasmuch as the Second Reference was made

for redressal of their grievance through their Union. The omission is fatal and the writ petition is liable to be dismissed on this technical ground alone, (iii) Even assuming that this Court proceeds not to dismiss the writ petition on the ground of nonimpleadment of necessary parties, as held by this Court in Champion Cycle Industry, Naini, Allahabad (supra) the questions raised by the petitioner can be well raised by it before the Tribunal (iii) the dispute raised was purely labour in nature, this Court need not exercise its discretionary jurisdiction in favour of the petitioner.

7. In view of the Division Bench decision of our own High Court, which is binding on us, we are of the view that the questions raised by the petitioner can be well raised by it even before the Tribunal.

8. The petitioner has not impleaded the Union and/or the two workmen which omission is fatal.

9. Having gone through the record we are also of the view that in any view of the matter it is not a fit case in which this Court should exercise its discretion in favour of the petitioner.

10. In view of the findings recorded as above we need not express ourselves as to whether it was a fit case in which the Second Reference should have been made by the State Government or not.

11. For the reasons aforementioned this writ petition is dismissed with cost, which we quantify to Rs. 2, 000/.

12. It goes without saying that the interim order passed earlier stands vacated with the dismissal of the writ petition.

13. As justice could not be done to one or the other party for about 8 years on account of pendency of this writ petition, accordingly, we direct the Tribunal to dispose of the matter at the earliest to whom the office will send at once a copy of this order for a follow up action.