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(2011) 12 AHC CK 0294

Allahabad High Court

Case No: Writ - C. No. - 17456 of 2006

Triveni Engineering and Industries Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: Dec. 1, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Industrial Disputes Act, 1947 - Section 10, 2, 2A, 4K

Citation: (2011) 12 AHC CK 0294

Hon'ble Judges: Bala Krishna Narayana, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble Bala Krishna Narayana, J.
Heard Sri S.D. Singh, learned counsel for the petitioner and Sri B.N. Singh, learned counsel for the respondent no.3.

2. Pleadings between the parties have been exchanged and with the consent of the learned counsel for the parties, this writ petition is being finally disposed of at this stage.

3. The facts of the case as emerging from the pleadings of the parties are that the petitioner, M/s Triveni Engineering & Industries Ltd., Deoband, Saharanpur is engaged in manufacturing of crystal sugar of high quality through vaccum pan process. The services of Jagdish Singh-respondent no.3 who was employed as Senior Cane Officer/ Varistha Ganna Adhikari in the petitioner"s establishment were terminated on 17.5.2005 on the ground of his being an indisciplined employee and habitual offender of law. The respondent no.3 moved an application on 19.5.2005 (annexure no.4 to the writ petition) before the Regional Conciliation Officer/Deputy Labour Commissioner, U.P. Saharanpur

u/s 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). In the said application the respondent no.3 had described his designation as Varistha Ganna Adhikari/ Senior Cane Officer. On the said application which was registered as C.P No. 45 of 2005 the respondent no.2 issued summon to the petitioner on 28.5.2005. The petitioner appeared before the respondent no.2 and filed a detailed objection on 12.7.2005 (annexure no.5 to the writ petition). The petitioner in its objection had denied that the respondent no.3 was a workman as defined u/s 2(z) of the Act as he was working in Administrative/Managerial capacity and was drawing a total salary of Rs.9,000/-per month. It was also stated that a large number of employees were working under his supervision and control and that he had illegally and wrongfully got himself enrolled as a member of Sugar Mill Mazdoor Sangh, Deoband, Saharanpur (hereinafter referred to as Union) and managed to get himself elected to the office of Up-Sabhapati of the Union for the year 2005. On 31.12.2005 the Deputy Labour Commissioner, Saharanpur-respondent made following reference u/s 4K of the Act:

Kya sevayojakon dwara apne karmchari Shri Jagdish Singh purtra Shri Ratan Singh, Varistha Ganna Adhikari ki sewayen dinank 17.5.2005 se samapt kiya jana uchit evam avaidhanik hai. Yadi nahin to sambandhit karmchari kya hitlabh/ anutosh pane ka adhikari hai evem anya kis vivaran sahit

4. On the same date the same Deputy Labour Commissioner who was also exercising the powers of Deputy Registrar, Trade Union, U.P., Saharanpur by his letter communicated to the Secretary of the Union that the respondent no.3 was an Officer of the petitioner''s Company and hence, he could not be a member of the workers union.

5. By means of the present writ petition the petitioner is challenging the validity of the reference dated 31.12.2005 purportedly made u/s 4K of the Act by the respondent no.2.

6. In the counter affidavit which has been filed on behalf of the respondent no.3 the averments made in the writ petition have been denied and the respondent no.3 has further asserted that the impugned reference does not suffer from any illegality or infirmity and the issue whether the answering respondent is a workman or not is a mixed question of law and fact both and cannot be decided by the Conciliation Officer in conciliation proceedings but can only be determined by a competent labour court after taking into account the various factors relevant for deciding the said issue and the evidence adduced before him by the parties.

7. It has also been stated in the counter affidavit that the report of the Deputy Labour Commissioner, Saharanpur dated 31.12.2005 is a procured document and as the Deputy Labour Commissioner is playing in the hands of the petitioner.

8. In the rejoinder affidavit which has been filed on behalf of the petitioner the averments made in the counter affidavit have been denied and those made by the petitioner in the writ petition have been reaffirmed and reiterated.

9. Sri S.D. Singh, learned counsel for the petitioner submitted that the reference dated 31.12.2005 made by the respondent no.2 is vitiated on account of total non-application of mind by the respondent no.2 to the material on record and is wholly illegal, arbitrary and violative of Article 14 of the Constitution of India.

10. He further submitted that from the perusal of the objection filed by the petitioner before the respondent no.2 and the material adduced before him as well as from the communication of the respondent no.2 himself dated 31.12.2005 it was apparent that the respondent no.3 was not a workman and the duties assigned to him were Administrative/Managerial in nature and hence, he was not entitled to the benefit of workman u/s 2(z) of the Act.

11. Sri S.D. Singh further submitted that the pre-requiste for making a valid reference u/s 4K of the Act is that before taking a decision to make or not to make a reference it is incumbent upon the concerned authority to take into consideration all relevant material on record and then form an opinion whether the employee is a workman and whether dispute exists or not and in case this is not done, as in the present case, the reference ipso facto becomes bad in law and cannot be sustained.

12. Sri B.N. Singh, learned counsel for the respondent no.3 refuting the submissions made by the learned counsel for the petitioner submitted that the State Government has made the reference after taking into consideration all the relevant factors and the material on record and since an order of appropriate government making a reference is an administrative order and not a judicial or quasi judicial order, the same is not amenable to judicial review by the High Court in the exercise of its power under Article 226 of the Constitution of India.

13. I have very carefully examined the submissions made by the learned counsel for the parties and perused the impugned order as well as the other materials brought on record.

14. The Apex Court in the case of Secretary, Indian Tea Association Vs. Ajit Kumar Barat and others, 2003 (3) SCC 93 while examining the scope of judicial review of an order of reference made u/s 10 of the Industrial Disputes Act which is analogous to Section 4K of the Act, after considering plethora of decisions of the Apex Court on the issue held as hereunder:

7. The law on the point may briefly be summarized as follows:

1. The appropriate Government would not be justified in making a reference u/s 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

2. The order of the appropriate Government making a reference u/s 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as it it was a judicial or quasi-judicial order.

3. An order made by the appropriate Government u/s 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus.

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

15. The Apex Court in paragraph 10 of the same judgment further held that before making reference u/s 10 of the Act the appropriate government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether the industrial dispute exists or is apprehended.

16. Similarly the Apex Court in the case of Moolchand Kharati Ram Hospital K. Union Vs. Labour Commissioner and Others, again held that it will be open to the High Court to examine whether relevant considerations in making the reference had been taken note of by the appropriate government or not. Paragraph no.4 of the aforesaid judgment which is relevant to our purpose is being reproduced hereinbelow:-

4. In these appeals the contention put forth before us is that the order made by the Government, making a reference to the Tribunal, is administrative in character and, therefore, the High Court should not have interfered with the same. Even if we proceed on the basis that the nature of the order, making a reference, is administrative in character, it is certainly open to the High Court to examine whether relevant considerations in making the reference had been taken note of or not. In the view of the High Court relevant considerations have not been taken note of by the Government and that finding cannot be seriously disputed.

17. Upon consideration of the aforementioned cases of the Apex Court it follows that although an order passed by the appropriate government making reference is an administrative order its judicial review by the High Court is not altogether ruled out and the High Court can interfere with administrative order if it is demonstrated that the State Government had while making the reference failed to take note of the relevant considerations.

18. The case of M/s H.R. Sugar Factory Vs. State of Uttar Pradesh and others, 1997 L.A.B. I.C. 3130 upon which strong reliance has been placed by Sri B.N. Singh, learned

counsel for the respondent no.3 for substantiating his submission that an order of reference is not open to judicial review by the High Court is of no help to the answering respondent and cannot be held to be an authority on the contention advanced by the learned counsel for the respondents in the face of settled law laid down by the Apex Court in Secretary, Indian Tea Association (supra) and Moolchand Kharati Ram Hospital K. Union (supra).

19. I now proceed to examine whether the order passed by the respondent no.2 making reference satisfies the pre-requsites of a valid order of reference as expounded by the Apex Court in the case of Secretary, Indian Tea Association (supra) and Moolchand Kharati Ram Hospital K. Union (supra).

20. There is nothing in the impugned order (copy whereof has been filed as annexure no.1 to the writ petition) which may show that the respondent no.2 before making the reference had either taken into consideration the relevant material on record which was before him in the form of objection filed by the petitioner in which the petitioner had categorically denied that the respondent no.3 was a workman and the application of the respondent no.3 filed by him u/s 2A of the Act in which he had described himself as Senior Cane Officer/ Varistha Ganna Adhikari or he had formed any opinion with reference to the material before him that the respondent no.3 was a workman as defined u/s 2(z) of the Act. In fact the respondent no.2 in the impugned order of reference has neither examined the issue nor recorded any opinion in his order whether the respondent no.3 is a workman and has proceeded to make the reference only on the basis of his satisfaction that an industrial dispute between the respondent no.3 and the petitioner existed. The non application of mind by the respondent no.2 to the materials on record while making the reference is further evident from his own communication dated 31.12.2005 (annexure no.6 to the writ petition) in which he had held that the respondent no.3 was an officer of the petitioner''s company and hence, he cannot be a member of the workers union.

21. From the above discussion it is clear that the impugned order fails to fulfil the pre-requisites of a valid reference as the respondent no.2 in the impugned order has failed to record any satisfaction that the respondent no.3 is a workman and hence, the impugned order cannot be sustained and is liable to be set aside.

22. The writ petition accordingly succeeds and is allowed. The impugned order of reference dated 31.12.2005 passed by Deputy Labour Commissioner, Saharanpur is hereby quashed.

23. The matter is remitted back to the Deputy Labour Commissioner, Saharanpur-respondent no.2 with a direction him to pass a fresh order in the matter in accordance with law and in the light of the observations made hereinabove within a period of one month from the date of production of certified copy of this order before him.