

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

Court: Allahabad High Court

Date of Decision: Dec. 1, 2011

Acts Referred: Constitution of India, 1950 " Article 14, 226
Industrial Disputes Act, 1947 " Section 10, 2, 2A, 4K

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 putra 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-requisite 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 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-requisites 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.