

Aulia Bidi Factory, Burhanpur and others Vs Industrial Tribunal, M.P., Indore and others

Court: Madhya Pradesh High Court

Date of Decision: Dec. 21, 1965

Acts Referred: Industrial Disputes Act, 1947 " Section 10(1)

Citation: (1966) JLJ 286

Hon'ble Judges: P.V. Dixit, C.J; R.J. Bhawe, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; R.S. Dabir, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution the Petitioners, who carry on the business of

Manufacturing Bidis at Burhanpur, pray for the issue of a writ of certiorari for quashing an award made by the Industrial Tribunal, Indore, on 2nd

may 1964 deciding some of the objections raised by the Petitioners in an "industrial dispute" referred to the Tribunal for adjudication by the

Government by an order dated 20th July 1963 made u/s 10(1) of the Industrial Disputes Act, 1947.

2. The order which the Government passed on 20th July 1963 u/s 10(1) of the Act is in the following terms:

No. /5568/XVI, WHEREAS the State Government is of opinion that an Industrial Dispute exists between the Rashtriya Bidi Mazdoor Sangh,

Burhanpur and the Bidi Manufacturer's Association, Burhanpur regarding leave with wages etc. as specified in the schedule hereto annexed.

And WHEREAS the State Government consider it desirable to refer the said dispute for adjudication.

NOW THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 1947)

the State Government hereby refers the said dispute for adjudication to the Industrial Tribunal Indore constituted u/s 7-A of the said Act.

SCHEDULE

1. whether there exists a case for payment of leave with wages to the employees employed in the Bidi Factories of Burhanpur listed in the

Annexure ?

2. whether there is any justification for ""payment of wages at the rate of Rs. 2/- per thousand bidis rolled to the workers of the bidi factories listed

in the Annexure ? If so, from what date the same rate should be payable ?

* * * *

3. The Petitioners raised certain preliminary objections questioning the validity of the reference and the jurisdiction of the Tribunal to entertain and

proceed with the reference. Their first objection was that according to the order of reference dated 20th July 1963 an Industrial dispute existed

between the Rashtriya Bidi Mazdoor Sangh, Burhanpur, and the Bidi Manufacturer's Association, Buthanpur, but that the latter Association was

not an ""employer"" within the definition of the term given in Section 2 (g) of the Act and, therefore, the reference was bad and illegal. They also

raised the objection that the second question referred for adjudication by the order dated 20th July 1963 was already the subject matter of an

award pronounced on 30th May 1963 and, therefore, a second reference on that subject-matter was barred by the principle of res judicata; and

that the Tribunal had no jurisdiction to determine where there was any failure on the part of the Bidi manufacturers to pay to persons engaged in

rolling Bidis at the rate of Rs. 2/- per thousand in accordance with the earlier award dated 30th May 1963. The Tribunal has held that the

reference made by the Government by its order dated 20th July 1963 is legal and maintainable. It postponed decision on other preliminary points

till after the recording of evidence. The Tribunal observed that those preliminary objections would be decided along with other issues. On the

legality of the reference the Tribunal observed that ""though ostensibly it might appear that the reference is against the Bidi Manufacturer's

Association, Burhanpur, in substance and in essence, it is against the members of the said Association and the Association simply represents them

as required by Section 36(2) of the Act. Such being the position, the objection raised is liable to be rejected.

4. Shri Dharmadhikaree learned Counsel appearing for the Petitioners, argued that the order passed by the Government on 20th July 1963 u/s

10(1) of the Act clearly showed that the dispute which the Government referred to the Tribunal for adjudication was not an ""Industrial dispute

between the Petitioner-employers and their employees but was only a dispute between the Rashtriya Bidi Mazdoor Sangh, Burhanpur, and the

Bidi Manufacturer's Association, Burhanpur, that under the Act no dispute between an Association of the employers and a Union of the

employees could be referred to an Industrial Tribunal for decision; and that, therefore, the reference made to the Tribunal by the Government by its

order dated 20th July 1963 was illegal. It was also urged that the Tribunal erred in holding that the other preliminary objections of the Petitioners

would be decided along with other issues.

5. Shri Dabir, learned Counsel for the Respondent Rashtriya Bidi Mazdoor Sangh, did not seriously contest the position that the order dated 20th

July 1963 passed by the Government u/s 10(1), of the Act purported to refer to the Tribunal for adjudication an ""industrial dispute"" said to be

existing between the Rashtriya Bidi Mazdoor Sangh and the Bidi Manufacturer's Association, Burhanpur, and not a dispute between the Petitioner

employers and their employees. Learned Counsel, however, submitted that if, under the order dated 20th July 1963, the Petitioners were not

parties to the dispute, then they had no locus standi to challenge the legality of the Tribunal's determination that the reference made to it by the

Government by its order dated 20th July 1953 was legal.

6. In our judgment, the order passed by the Government on 20th July 1963 u/s 10(1) of the Act referring to the Industrial Tribunal for adjudication

the dispute described in the first paragraph of the said order is, on the face of it, illegal. Section 10 (1) of the Act lays down:

Reference of Disputes to Board, Courts or Tribunals -

(1) where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may at any time, by order in writing-

* * * *

(2) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the

second or Third Schedule, to a Tribunal for adjudication.

The term ""Industrial dispute"" has been defined by Section 2 (k) thus: -

Industrial dispute"" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen

and workmen, which is connected with the employment or non employment or the terms of employment or with the conditions of labour, of any

person;

7. Now, it will be seen that in making a reference u/s 10(1) the Government has first to form an opinion that an industrial dispute exists or is

apprehended. The formation of the opinion mentioned in Section 10(1) is a preliminary step in the discharge of the function under that provision.

No doubt as held by the Supreme Court in State of Madras Vs. C.P. Sarathy and Another, , in making a reference u/s 10(1) the Government

does an administrative act. But the fact that the function exercised by the Government u/s 10(1) is an administrative function does not preclude the

aggrieved party from showing that what has been referred to by the Government by an order under Section 10(1) is not an "industrial dispute" at all;

and that therefore, the Industrial Tribunal has no jurisdiction to make any award on the reference. This is clear from the decision of the Supreme

Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, In that case it was observed by the Supreme Court: -

In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers,

that is not destructive of the rights of an aggrieved party to show that what was referred was not an "Industrial dispute" at all and therefore the

jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a

party's challenge.

Thus, if the dispute is an "Industrial dispute" as defined in the Act, its factual existence and the expediency for the making of a reference in the

circumstances of a particular case are matters entirely for the Government to decide upon, and the Court cannot canvass the order of reference for

seeing whether there was any material before the Government to support its conclusion about the factual existence of a dispute or the expediency

of making a reference in regard to it. But, it is competent for this Court to determine whether by the order dated 20th July 1963 the Government

referred to the Tribunal for adjudication an "industrial dispute" within the meaning of Section 2 (k). If the dispute is not an "industrial dispute" as

defined by Section 2 (k) of the Act, then the Industrial Tribunal has clearly no jurisdiction to entertain and make an award despite a reference u/s

10(1) of the Act.

8. According to the definition of "industrial dispute" given in Section 2 (k), in order to constitute a dispute or difference connected with the

employment or non-employment of the terms of employment or with the conditions of labour, of any person, the dispute or difference must be

between employers and employees, or between employers and workmen, or between workmen and workmen. A dispute between a Sangh or

Union of the employees and an Association of the employers is clearly not a dispute between any employers and their workmen. It is no doubt

true, as held by the Supreme Court in *C.P.T. Service v. Raghunath* AIR 1957 SC 105 and *The Bombay Union of Journalists and Others Vs. The*

"Hindu", Bombay and Another, that a dispute between an employer and a single employee is not per se an industrial dispute but that it may

become one if it is taken up by the Union of the employees or a number of workmen. But from the proposition laid down in these cases of the

Supreme Court that the machinery contemplated by the Industrial Disputes Act can be set in motion to settle only disputes which involve the rights

of workmen as a class and that a dispute touching the individual rights of a workman cannot be the subject of adjudication under the Act when the

same has not been taken up by the Union of the employees or a number of workmen, it does not follow that a dispute between the employers and

the Union of employees or between an Association of employers or an Union of employees is an ""industrial dispute"" within the meaning of the

definition of the term given in Section 2 (k). It is possible to imagine a case where a Union of employees on its own and without any reference to

the wishes or the interest of the employees purports to start some dispute when it has no power conferred upon it by its members to start that

dispute. Cases of disputes having been raised by Unions of employees without the approval or backing of their members are not unknown. In The

Kandan Textile Ltd. Vs. The Industrial Tribunal (1) and Others, , a reference to the Tribunal was made by the Government u/s 10(1) on the basis

of a letter sent by the President of a Labour Union. The Madras High Court quashed the award taking the view that simply because some

individual or organization addressed a communication to the Government saying that there was an industrial dispute between the employer and the

workman, the Government would not be justified in passing an order referring the, matter to the tribunal without being satisfied on the material

placed before it that a dispute did exist or was apprehended. The facts that an Association of employers or a Union of employees is entitled to

represent the employers or the employees; as the case may be, in proceedings under the Industrial Disputes Act does not also make an industrial

dispute between the employers and the employees a dispute between the Association of employers and the Union of employees.

9. Here, as is evident from the order dated 20th July 1963 itself, the Government formed the opinion that an industrial dispute existed between the

Rashtriya Bidi Mazdoor Sang and the Bidi Manufacturer's Association; Burhanpur. A dispute between the Sangh and the Association is clearly

not an ""industrial dispute"" within the meaning of the term given in Section 2 (k). For a valid reference u/s 10(1) of the Act the Government was

required to form an opinion that an industrial dispute as between employers and employees, or between employers and workmen or between

workmen and workmen, existed or was apprehended. The opinion which the Government thus formed in the present case was not in regard to the

existence of any dispute or difference between the employers, that is the Petitioners, and their employers The preliminary step, namely, that of the

formation of an opinion with regard to the existence of an industrial dispute between the Petitioner employers and their employees not having been

taken, the reference made by the Government by its order dated 20th July 1961 cannot be held to be legal. That order cannot be regarded as a

valid order referring an industrial dispute between the Petitioner-employers and their employees. It cannot be regarded even as a valid order

referring a dispute between the Rashtriya Bidi Mazdoor Sangh and Bidi Manufacturer's Association as a dispute between such bodies is totally

outside the definition of the term "industrial dispute" given in Section 2 (k).

10. In the present case, the State of Madhya Pradesh was made a Respondent party, but no return has been filed on behalf of the State and there

is no material whatsoever to show that though in the order dated 10th July 1963 it was mentioned that an industrial dispute existed between the

Rashtriya Bidi Mazdoor Sangh and the Bidi Manufacturer's Association, Burhanpur, the Government in fact formed an opinion that an industrial

dispute existed between the Petitioner-employers and their employees.

11. The Tribunal has relied on certain observations made in the decision of the Travancore Cochin High Court in B. G. Walter v. Chief Secretary

AIR 1953 Tra. Cochin 286. In our judgment, they are not in point. In the Travancore Case the order passed by the Government u/s 10(1) of the

Act enumerated the names of the employers and expressly stated that an industrial dispute had arisen between those employers and the workmen

employed by them. It appears that in that case an objection was taken that the employers' Association was not entitled to represent those

employers who were not shown as parties in the order of reference. It was while dealing with this objection that it was observed by the Travancore

Cochin High Court that an association which is admittedly a representative of the employer factories is in law entitled to represent all the employers

and it is not necessary for such representation that the employers should also be "co nomin" parties to the reference. These observations do not in

any way lend support to the proposition that u/s 10(1) read with Section 2 (k) of the Act a dispute between an Association of employers and a

Union of employees can be referred to the Tribunal for adjudication.

12. The objection of the learned Counsel for the Respondent No. 2 that the Petitioners have no locus standi to file this petition as the order dated

20th July 1963 does not refer to the Industrial Tribunal for adjudication any dispute between them and their employees is without any substance. It

is true that the order dated 20th July 1963 does not refer any industrial dispute between the Petitioners and their employees. But the Industrial

Tribunal has in effect treated that order as one referring to it for adjudication an industrial dispute between the applicants and their employees. That

being so, the Petitioners are clearly entitled to question the jurisdiction of the Industrial Tribunal to entertain the reference and make an award.

13. In the view we have taken of the order of reference dated 20th July 1963, it is not necessary to consider the objection put forward on behalf

of the Petitioners that a second reference on matters already adjudicated upon by an award dated 30th May 1963 was not competent.

14. For these reasons, our conclusion is that the dispute which the Government has purported to refer by its order dated 20th July 1963 is not an

industrial dispute"; and, that being so, the Tribunal has no jurisdiction to entertain the reference and make an award thereon. The result is that this

petition is allowed. The order of reference dated 20th July 1963 of the State Government u/s 10(1) of the Industrial Disputes Act is quashed, and

the award made by the Industrial Tribunal on 2nd May 1961 is also quashed. In the circumstances of the case, we leave the parties to bear their

own costs of this petition. The outstanding amount of the security deposit shall be refunded to the Petitioners.