(2010) 09 MAD CK 0174

Madras High Court

Case No: W.A. No. 1828 of 2009

United Labour Federation	APPELLANT
Vs	
The Government of Tamil Nadu, The Management of Hosur Electronics and Engineering Private Ltd. and The Management of Dynaspede Integrated Systems Private Ltd.	RESPONDENT

Date of Decision: Sept. 22, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 10(1), 12(5), 18(1)

Citation: (2011) 1 LLJ 792

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanam, J

Bench: Division Bench

Advocate: V. Prakash for Ramapriya Gopalakrishnan, for the Appellant; Sanjay Mohan, for Ramasubramaniam Associates for R 3, Sai Prasad, for Sairaj Associates for R 2 and Raja Kalifulla, Govt. Pleader for R 1, for the Respondent

Final Decision: Dismissed

Judgement

M.Y. Eqbal, C.J.

This appeal filed by the Appellant, United Labour Federation through its General Secretary, is directed against the judgment dated 29th Oct., 2008, passed in W.P. No. 20172/07 and 28487/07, whereby learned single Judge dismissed the writ petition holding that the impugned orders challenged in the writ petitions needs no interference by the Court.

2. The Appellant/writ Petitioner filed W.P. No. 20172/07 challenging the order of the Government of Tamil Nadu in G.O. (D) No. 362, L&E (C) Dept., dated 17th May, 2007, declining to refer the alleged industrial dispute raised by the Appellant for adjudication. The 3rd Respondent, M/s. Dynaspede Integrated Systems Pvt. Ltd.,

also filed W.P. No. 28487/07 challenging the Government Order in G.O. No. 589 dated 1st Aug., 2007, referring for adjudication the charter of demands raised by the Appellant, United Labour Federation as well as the Management of Dynaspede Integrated Systems Pvt. Ltd. and Hosur Electronics and General Engineering Pvt. Ltd. The present appeal has been filed only by the Appellant and, there fore, this appeal is confined only against the judgment deciding the writ petition, being W.P. No. 20172/07.

3. The facts of the case lie in a narrow compass. The 3rd Respondent, M/s. Dynaspede Integrated Systems Pvt. Ltd. (in short ''Dynaspede'') was engaged in the manufacturing of load cells, eddy current drives, panel boards, etc., for export and also for defence and other requirements. The manufacturing unit was operating in Plot Nos. 135and136-A,SIPCOT Industrial Complex, Hosur. Inthesaidfactory,about110 workers were employed and out of them, 57 persons are the members of the present Appellant Union. It appears that in the year 1989, the workers started an Union in the name of Hosur Electronics and General Engineering Workers Union. It was alleged by the Union that the Management of Dynaspede imposed illegal lockout and took the signatures from the workers under a settlement entered into u/s 18(1) of the Industrial Disputes Act. In terms of the said settlement, the management allegedly claimed to have closed down the unit and settled the terminal benefits of the workers and brought them on the role of a new company by the name Hosur Electronics and General Engineering Pvt. Ltd. (in short ''HEGE''). The said company was formed by the Management of Dynaspede. The contention of the writ Petitioner was that, for the purpose of evading legal obligations towards its workers, Dynaspede leased out the factory in favour of HEGE. On these allegations, in the year 2006, the Petitioner/Appellant raised an industrial dispute as against the Management of Dynaspede and HEGE, interalia contending that Dynaspede is there alemployer of the workmen and, therefore, the workmen are entitled to be made permanent in the services of Dynaspede. However, the appropriate Government declined to refer the dispute for adjudication by the impugned order in G.O. (D) No. 362 dated 17th May, 2007, on the ground that the factory of Dynaspede was closed in the year 1989 and that the workers had accepted the compensation pursuant to the settlement.

4. Learned single Judge, after considering the entire facts of the case and also the terms of settlement arrived at between the Appellant Union and Dynaspede in the year 1989, came to the conclusion that there was a valid settlement between the Appellant Union and Dynaspede on 14th Dec., 1989, which is binding on all the parties concerned. Learned single Judge also held that by the terms of settlement, all the issues raised by the workers were settled and, therefore, no further dispute could be raised after about a lapse of 17/18 years, i.e., in the year 2006. Accordingly the writ petition was dismissed.

5. Mr. V. Prakash, learned senior counsel, assailed the impugned judgment passed by learned single Judge as being illegal and contrary to the settled proposition of law. Learned Counsel submitted that when the Government having found fit to refer the charter of demand raised by the Appellant Union for adjudication under G.O. No. 589 dated 1st Aug., 2007 as against both the Management of Dynaspede and HEGE, it was not proper on the part of the Government to decline to refer for adjudication the disputes raised by the Union on the basis that the workmen involved are not the workmen of Dynaspede. Learned Counsel further submitted that learned Judge failed to appreciate that the Government exceeded its jurisdiction and power conferred u/s 10 of the Industrial Disputes Act by entering into the merits of the dispute, which is not permissible in law. Further, learned senior counsel drew our attention to the failure report and the order of the Government declining to refer the dispute for adjudication and submitted that in view of the reasonings given in the failure report, the impugned order of the Government declining to refer the dispute for adjudication is wholly without jurisdiction.

6. On the other hand, Mr. Sanjay Mohan, Mr. Raja Kalifulla and Mr. Sai Prasad, learned Counsel appearing for the respective Respondents mainly contended that in the year 1989 itself all the disputes raised by the workers of the Appellant Union were finally settled and all benefits have been paid to the workers. They having been satisfied with the settlement did not raise any dispute with regard to the validity of the settlement. It was only after about two decades, the Appellant Union tried to raise further disputes, which have been rightly declined by the Government by not referring the dispute for adjudication.

7. The facts, which are not in dispute are that, in the year 1989, at the time of closure of the manufacturing unit of Dynaspede, industrial disputes were raised and after negotiations, a settlement was arrived at between the workmen and the Management of Dynaspede. The terms of the settlement has been referred to in the impugned judgment, which is reproduced here in below:

• The workmen agree that they will not prosecute further the industrial dispute in reference No. A2/47850/89 which was pending before the Joint Commissioner of Labour (Conciliation), Madras and since ended in failure.

• The workmen hereby withdraw the authoris a tion given to Hosur Electronics Engineering and General Employees Union affiliated to C.I.T.U. to sponsor their cause before any and all the authorities under the various labour statutes.

• The management and the workmen agree that each of the workmen will be paid additional compensation in the form of 1 1/2 months wages and a lump sum of Rs. 1500/-for the period of closure in order to ameliorate their hardship. By virtue of this, the workmen agree not to press for their demands for full wages or any other monetary compensation for the period of closure.

• The management agree to sell the two wheeler vehicles that were availed by the workmen at the written down book value as on date of this settlement. This amount will be paid by the workmen within 7 days from the collection of their vehicle.

• In view of the closure of the manufacturing activities, the workmen collectively appealed to the management about the hardship and suggested a rehabilitation approach to be independent entrepreneurs and assist the management in or ganising the manufacturing. The management considered the appeal of the workmen and agreed to extend all co-operation in the formation of the workmen venture by providing necessary infrastructure.

• The management and the workmen agree that apart from above, the closure compensation payable as per the provisions of which have been offered but not claimed will be collected by all workmen.

• In view of the overall settlement, the workmen agree that they have no claims against the management like, reinstatement, back wages and this settlement shall terminate the employer-employee relation between the workmen and the management. The workmen agree that they have no claims whatsoever, against the management either monetary or otherwise.

8. In the year 2006, when the Appellant Union again raised industrial disputes and sought reference, the Government, on consideration of the settlement arrived at in the year 1989 and also considering other materials available on record, declined to refer the dispute for adjudication. The Government found that after the closure of the company in the year 1989, all disputes were settled and the workers received compensation amount accepting the closure of the company. Further, the case filed before the Labour Court, Vellore, was also dismissed.

9. The only question that falls for consideration is, as to whether the Government exceeded its jurisdiction in declining to refer the dispute for adjudication, as contended by the learned senior counsel for the appellant.

10. Before coming to the conclusion, we would like to refer the ratio decided by exceeded its jurisdiction in declining to refer the dispute for adjudication, as contended by the learned senior counsel for the Appellant. the Supreme Court in the case of Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, , wherein their Lordships discussed the power of the Government u/s 10 of the Act. Their Lordships observed:

Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial

peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a partyitwouldbe open tosuch a party to show that was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters (see State of Madras Vs. C.P. Sarathy and Another,

11. In this regard, learned single Judge referred a judgment of a Division Bench of this Court in Shaw Wallace & Co. case (1997 (I) LLJ 177), where this Court held:

Discretion given in Section 10(1) read with Section 12(5) has to be exercised in such a manner that it would not exceed the limits prescribed for the sphere of reference and enter into the territory of adjudication. What the Government is expected to decide before making a reference is whether on a prima facie examination of the facts of the case there is a dispute which requires a trial or adjudication by a tribunal or a Court. Government cannot take the function of adjudication. If the claim is patently frivolous or if the admitted facts are so glaringly against workmen not warranting trial or adjudication by tribunal or court, then the Government would be justified in refusing to make a reference. If the claim is stale and belated it need not be referred for adjudication. Where a reference would not be conducive to industrial peace in the region or would have an adverse impact on the general relation of employer and employee the Government would be justified in such cases to refuse to make reference.

12. At this stage, it is also worth to refer the decision of the Supreme Court in the case of Secretary, Indian Tea Association v.A.K. Barat reported in 2000 (2) LLN 25. In that case, the Supreme Court while discussing the scope and power of the

Government u/s 10 of the Act observed 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 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 is not a judicial or quasi-judicial one, and the Court, therefore, cannot canvass the order of reference closely to see if there was any material before the government to support its conclusion, as if 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.

13. In the case of P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, , the Supreme Court has observed: (Para.9 -Page 659)

It has to be kept in view that the Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. Thus principle of industrial democracy is the bedrock of the Act. The employer or a class of employers on the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicably as far as possible by entering into the settlement outside the conciliation proceedings or if no settlement is reached and the dispute reaches the conciliator even during conciliation proceedings. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. The reins of bargaining on his behalf are handed over to the union representing such workman. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus, settlements are the live wires under the Act for ensuring industrial peace and prosperity....

14. In our considered opinion, therefore, the appropriate Government will not automatically and in a routine manner refer the dispute, whenever raised by the workmen represented by Union, for adjudication. The appropriate Government can

decline to refer the dispute for adjudication if it is satisfied on the basis of the materials available on record that the industrial dispute does not exists. If the opinion formed by the Government is on the basis of the materials available before it, then such order declining reference needs no interference by this Court.

15. In the instant case, as noticed above, the appropriate Government, after having satisfied that the dispute raised earlier by the Appellant Union was finally settled and the workmen got the monetary and other benefits out of the said settlement, declined to refer the non-existent dispute, we do not find any error in the said order. Learned single Judge, therefore, rightly refused to interfere with the order and dismissed the writpetition.

16. For the reason aforesaid, we do not find any merit in this appeal, which is accordingly dismissed. However, in the facts of the case, there shall be no order as to costs.