(2007) 09 CAL CK 0044

Calcutta High Court

Case No: Writ Petition No. 1414 of 2005

Indian Oil Corporation Ltd.		APPELLANT
	Vs	
Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and Others		RESPONDENT

Date of Decision: Sept. 17, 2007

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(4), 12(4)

Citation: (2009) 117 FLR 947 : (2008) 3 LLJ 241

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Arijit Chowdhury and Arunava Ghosh, for the Appellant;Partha Mukherjee and Susanta Pal, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

The corporation, as petitioner, is questioning the order of the central government dated February 2, 2005 referring an existing industrial dispute to the Central Government Industrial Tribunal-cum-Labour Court, Kolkata. The schedule to the order of reference reads as follows:

Whether the seven casual workmen viz. S/Sri Ashrumoy Dutta, Gowtam Roy, Manoranjan Haider, Buddadeb Das, Suraj Das, Jayadev Pal and Kajal Das who are working at Aviation Fuel Station (of Indian Oil Corporation Ltd., Marketing Division) at NSC Bose International Airport, Kolkata, continuously since March 17, 1992 entitled for regularization into the services of IOCL (MD) or not? In case they are entitled for regularization, from which date and in which pay-scale/grade they should be regularized? Whether the action of the management of IOC Ltd. (MD) in

continuing these seven workmen on casual basis since March 17, 1992 is justified? If not, to what relief these workmen are entitled?

2. Admittedly, at one point of time the second to eighth respondents were engaged in connection with certain works of the corporation as contract labours. In a meeting held on March 17, 1992 a decision was taken that the contractors'' workers deployed by the management of the corporation, for the jobs indicated in the minutes of the meeting, at Calcutta AFS would be paid by the corporation on daily wage basis. Proceedings were initiated under provisions of the Contract Labour (Regulation & Abolition) Act, 1970. By a decision taken in August 2003 (that was taken in terms of an order of this Court dated January 17, 2001 made in W.P. No. 17712 of 1999 filed by the second to eighth respondents), the central advisory contract labour board held that since the second to eighth respondents had ceased to be contract labours and the corporation had directly engaged them, there was no scope to make any order prohibiting employment of contract labours. Thereupon the second to eighth respondents wanted the corporation to absorb them on regular basis, and since the corporation declined to oblige them, they approached the conciliation officer under the Industrial Disputes Act, 1947.

3. Before the conciliation officer they claimed that having worked as casual workmen they had become entitled to be absorbed in the establishment of the corporation on regular basis. Their claim was contested by the corporation by submitting written objections dated April 8, 2004 and July 15, 2004. In its written objections the corporation specifically stated that the second to eighth respondents were, if at all, contract labours, but not casual labourers or workers of the corporation. Raising the objection the corporation took the plea that there was no reason or Scope to appoint them in its establishment on regular basis. The conciliation officer submitted his failure report dated November 1/5, 2004. The failure report, accompanied by the representation of the second to eighth respondents raising the dispute, minutes of the conciliation proceedings dated September 30, 2004, objection letters of the corporation dated April 8, 2004 and July 15, 2004, and the letters or the union espousing the cause of the second to eighth respondents, however, did not reflect the case of the corporation made out in its written objections filed before the conciliation officer. In the failure report it was not mentioned that according to the corporation the persons submitting the representation raising the dispute were only contract labours, and not casual labourers or workers. On the basis of the failure report, the central government, as the appropriate government with respect to the corporation, made the impugned order of reference.

4. By referring me to the provisions in Section 10(4) of the Industrial Disputes Act, 1947, and the decisions in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, ; Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, ; and Organon India Ltd. Vs. State of West Bengal and Others, , Mr. Chowdhury,

counsel for the corporation, has argued that the order of reference is vitiated by gross non-application of mind in that the central government did not consider the materials available before it for referring the industrial dispute, if any, that was actually existing. His contention is that there was absolutely no reason for the central government to proceed on the basis that the second to eighth respondents were casual labourers or workers engaged by the corporation.

5. Mr. Mukherjee, counsel for the second to eighth respondents, has said that as will appear from the minutes of the meeting dated March 17, 1992 and the decision of the central advisory contract labour board given in August 2003, the second to eighth respondents, on their ceasing to be contract labours, were engaged by the corporation on daily wage basis, and hence the government was fully justified in referring the existing industrial dispute on the basis that they had been engaged by the corporation as casual workmen. On the strength of the Apex Court decision in Shambu Nath Goyal Vs. Bank of Baroda, , he has contended that the order of reference cannot be questioned by the corporation on the ground that there was no material before the government to make a reference proceeding on the basis that the second to eighth respondents had been engaged by the corporation as casual workmen. By referring me to Delhi Cloth & General Mills Co. Ltd. v. Workmen and Ors. (supra), he has submitted that it is for the Tribunal to ascertain from the pleadings of the parties what is the actual nature of the dispute, and that when the corporation is entitled to take all points and raise all questions inviting the Tribunal to go into them for adjudication, there is no reason why the order of reference, a pure administrative decision, should be interfered with by the writ Court.

6. From Delhi Cloth & General Mills Co. Ltd. v. Workmen and Ors. (supra) it is absolutely clear (a) that the parties to an industrial dispute referred to the Tribunal for adjudication cannot be allowed to contend that the foundation of the dispute mentioned in the order of reference was non-existent, and that the true dispute was something else; and (b) further that the Tribunal is not competent to entertain such a question, because, in view of the provisions in Section 10(4), it can decide only those questions which are incidental to, i.e. adjuncts to the dispute that cannot be cut at the root by its any adjunct. It is therefore clear that in the present case whether the second to eighth respondents were actually casual workmen engaged by the corporation is not a matter incidental to the industrial dispute referred. If the corporation is permitted to take the plea that the second to eighth respondents were never engaged as casual labourers or workmen, then such contention, cutting at the root of the dispute, i.e. the fundamental thing, would be wholly beyond the adjudicating power of the Tribunal, and hence it will not be competent to entertain it. In Delhi Cloth & General Mills Co. Ltd. v. Workmen and Ors. (supra) one of the issues referred was whether a strike was justified, and their Lordships held (in para. 9) that it was not open to any party to the dispute to invite the Tribunal to adjudicate whether there was any strike at all. It was held that such a question was not to be treated as a matter incidental to the issue concerned referred to the Tribunal. I do

not see how it can be said on the basis of what was said in para 18 of the report that in the present case after considering the pleadings of the parties the Tribunal will be in a position to go into the question whether the second and eighth respondents were ever engaged by the corporation as casual workmen. The Tribunal, as was said in the decision, simply will not be competent to entertain the plea, even if taken by the corporation in its written statement.

7. The same position of law was noticed by their Lordships of the Apex Court in Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. and Anr. There the issue referred to the Tribunal was whether the closure was justified. It was held that the parties to the dispute were not entitled to invite the Tribunal to adjudicate the question whether there was any closure at all. In Orsanon India Ltd. v. State of West Bengal and Ors. (supra) the issue referred to the Tribunal was whether termination of service of the person concerned was justified, and it was held by a single bench of this Court that in the proceedings no party to the dispute would be entitled to invite the Tribunal to adjudicate whether the person concerned abandoned his service. After noticing that the case of the management was abandonment of employment by the person concerned, this Court quashed the order of reference on the ground that appropriate dispute had not been referred by the government, and hence the order of reference suffered from non-application of mind. I do not see how Shambu Nath Goyal v. Bank of Baroda (supra) can be of any assistance in the present case. Here the corporation is not contending that though there was no material before the government to form an opinion that an industrial dispute was in existence, the Government decided to make the order of reference. It is not the case of the corporation that on the materials the government was not supposed to conclude that an industrial dispute was existing, and it is not questioning the order of reference on that ground.

8. Here, I find that the appropriate government did not consider all the materials before it for ascertaining what was the actual industrial dispute, if any. The failure report of the conciliation officer dated November 1/5, 2004 did not reflect the case of the corporation at all. In its written objections it specifically took the plea that the second to eighth-respondents had never been engaged by it as casual labourers or workmen, and that, if at all, they had been working as contract labour. The question whether in the face of the minutes of the meeting held on March 17, 1992 and the decision of the central advisory contract labour board given in August 2003 the corporation was entitled to take or justified in taking such a plea as it took before the conciliation officer is not material for deciding whether the appropriate government applied its mind while ascertaining -what was the actual dispute regarding which the conciliation officer had submitted his failure report. In the process, in my view, the appropriate Government ought to have considered not only the failure report, but all the documents accompanying it, since they all together, in view of the provisions in Section 12(4) of the Industrial Disputes Act, 1947, constituted the full report of the conciliation officer. It is apparent on the face of the

order of reference that the central government did not, consider any other material except the bare failure report that unfortunately did not reflect the case of the corporation pleaded before the conciliation officer.

9. It is also apparent that the Central. Government while ascertaining the actual dispute between the parties did not consider the corporation''s written objections dated April 8, 2004 and July 15, 2004 in which its case that the second to eighth respondents had never been engaged as casual labourers or workmen was specifically stated. In my view, once all the materials which were available before the Central Government are considered, there can be no doubt that the actual dispute between the parties was whether the second to eighth respondents had ever been engaged by the corporation as casual labourers or workmen. Although this seems to be the real dispute that was existing between the parties, and it was apparent on the face of the available materials, the appropriate government, obviously overlooking the important materials, referred the dispute proceeding on the basis that the second to eighth respondents had been engaged by the corporation as casual workmen.

10. I fully agree with counsel for the corporation mat the order of reference, vitiated by gross non-application of mind, has caused serious prejudice to the corporation in that, if the order of reference is maintained, it will not be entitled to invite the Tribunal to adjudicate whether the second to eighth respondents had ever been engaged by it as casual labourers or workmen. He is fully justified in saying that in the face of the order of reference as it stands now, the corporation is not entitled to invite the Tribunal to adjudicate the question whether the second to eighth respondents were working in the corporation in the capacity of contract labour. I therefore hold that the order of reference cannot be sustained.

11. For these reasons, I allow the writ petition and set aside the impugned order of reference Bated February 2, 2005. I, however, make it clear that nothing in this order shall prevent the appropriate government from making an appropriate order of reference to the appropriate Tribunal in accordance with law. There shall be no order for costs.

12. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the Section concerned.