

Patvolk Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Oct. 8, 2001

Acts Referred: Industrial Disputes Act, 1947 " Section 10, 10(2A)

Citation: (2002) 94 FLR 359 : (2002) 2 LLJ 956

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: Partha Bhanja Chowdhury, for the Appellant; Jayanti Dhar Quader, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.

Learned counsel for the petitioner contends that in view of the vagueness in the order of reference, the matter could not be

adjudicated upon by the 8th Industrial Tribunal. Subsequently, it was transferred to the 4th Industrial Tribunal. According to him, the notification

dated March 11, 1997 could not be construed to mean the 4th Industrial Tribunal nor the 8th Industrial Tribunal. In order to substantiate his

contention, he referred to annexures to this petition at pages 60 and 61 respectively of this Writ Petition. From the said annexures, he points out

that the reference is made to a particular Tribunal and such Tribunal was to pass its award within the time stipulated. Whereas in the impugned

order of reference, no particular Tribunal has been mentioned in the order of reference. Therefore, the vagueness is apparent on the face of it.

According to him, it will be an infraction of substantive law, which cannot be overlooked and corrected. He has relied on the decision in Bennet,

Coleman and Co. Ltd. Vs. State of Punjab and Others, to contend that in such case, both the Tribunals will lose jurisdiction. According to him, u/s

10(1)(d) the Appropriate Government is to exercise this power, while referring to a particular Industrial Tribunal. Section 33B of the Industrial

Disputes Act prescribes that it is only the Appropriate Government, which can transfer. Therefore the transfer, made by the 8th Industrial Tribunal,

is void and by reason of the decision cited and the position in law, both the 8th and 4th Industrial Tribunal had lost jurisdiction.

2. Even if it is accepted that by the said notification dated March 11, 1997, reference was made to more than one Tribunal, in that event, in one

part of the order of reference, the 4th Industrial Tribunal would not have been mentioned. If in the order of reference the particular of the Tribunal

was altogether absent and was not mentioned anywhere in the order, in that event, the contention of the learned counsel for the petitioner could be

said to be of substance. In one place, it might have been omitted even if it is at the place where the order of reference is made; but still then when it

is indicated immediately thereafter that it is to the 4th Industrial Tribunal, in terms of Sub-section (2-A) of Section 10, while prescribing the time

limit, in that event, the reference was made particularly to the 4th Industrial Tribunal. Inadvertent omission to mention 4th Industrial Tribunal at the

third paragraph will be too a technical ground. Therefore, on this ground it cannot be said that the order of reference is so vague that the 4th

Industrial Tribunal has lost its jurisdiction.

3. So far Sub-section (2-A) of Section 10 is concerned, it prescribes that time limit is to be stipulated in the order of reference. u/s 10, when a

reference is made, it is made to a particular Tribunal. Therefore, it is necessary to mention the name of the Tribunal, in the order of reference. In

view of Sub-section (2-A) of Section 10, the time, within which the Tribunal has to pass its award, is required to be indicated in the order of

reference. Therefore, the order of reference must contain the name of the Tribunal, and the period, within which such Tribunal is to pass the award.

In the present case, while the reference is made u/s 10(1)(d), the name of the Tribunal appears to be missing. But, in the immediately following part

of the same order of reference, where time is stipulated under Sub-section (2-A), the 4th Industrial Tribunal is required to submit its award within

the time stipulated. Thus, a reading of the order of reference indicates that the reference was made to the 4th Industrial Tribunal. Otherwise, the 4th

Industrial Tribunal would not have been required to submit its award with the time stipulated. Since the reference was intended to be made to the

4th Industrial Tribunal, therefore, the 4th Industrial Tribunal was required to submit its award within the time stipulated in the order of reference.

4. A document or an order is to be interpreted according to its intent and purpose. Such intent and purpose is to be found out from within the four

corners of the document or the order itself. We cannot take extraneous aid. But, at the same time, a deed or a document has to be read as a

whole. It cannot be split up and a part cannot be read, out of context. The entire document or the order is to be reconciled. If there is anything to

indicate that it can be so interpreted on the basis of the expression used in it, then the Court cannot throw it out as invalid. Before declaring an

order or a deed invalid, the Court has to endeavour to give a purposeful meaning, if possible, having regard to the contents of the deed or the

order, as the case may be.

5. Reading the order of reference as a whole, in the present case, we find that the reference was intended to be made to the 4th Industrial Tribunal,

which is reflected in the part, where time was stipulated, in terms of Sub-section (2-A). Thus, the reference could not be thrown away on the

ground of invalidity as contended on behalf of the petitioner.

6. Section 33B empowers State Government to transfer a dispute from one Tribunal to other. The power to transfer a dispute has not been

conferred on the Tribunal. It is the exclusive jurisdiction of the appropriate Government making the reference. In the present case, the reference

was received by the 8th Industrial Tribunal. The 8th Industrial Tribunal had transmitted the reference to the 4th Industrial Tribunal. Upon such

transmission, the 4th Industrial Tribunal is proceeding with the reference. Since the reference was made to 4th Industrial Tribunal, as held earlier, it

could not have been received by the 8th Industrial Tribunal, since 8th Industrial Tribunal could not have assumed jurisdiction in respect of the

reference so made. Therefore, receipt of the reference by 8th Industrial Tribunal could not be alleged to be an assumption of jurisdiction to

entertain the reference. As soon as the attention of 8th Industrial Tribunal is attracted or drawn to the order of reference, that it was made to 4th

Industrial Tribunal, it is incumbent on the 8th Industrial Tribunal to transmit the reference for being placed before the Tribunal to which the

reference is made. It is not a case of transfer by the 8th Industrial Tribunal to the 4th Industrial Tribunal. Since 8th Industrial Tribunal could not

assume jurisdiction, therefore, the transmission of the reference to 4th Industrial Tribunal by it, could not be said to have been done in exercise of a

jurisdiction to transfer or in relation to a reference. On the other hand, it is simply a ministerial action by reason of the fact that through inadvertence

or mistake, the reference had reached it, which ought to have reached the 4th Industrial Tribunal. The moment the reference is transmitted to the

4th Industrial Tribunal by the 8th Industrial Tribunal, it cannot be said that 8th Industrial Tribunal had received the reference or had assumed

jurisdiction in relation thereto.

7. The facts of this case, thus, appear to be distinguishable from those involved in Bennett Coleman and Company Limited (supra). Therefore, the

ratio decided therein, does not apply in the facts and circumstances of the case, the ground that has been advanced, is too technical one, which

does not, in any way, affect or prejudice the right of the petitioner. Therefore, I am unable to accede to the contention raised on behalf of the

petitioner. The reference is hereby held to be a valid one. The 4th Industrial Tribunal has every jurisdiction to proceed with it.

8. This Writ Petition, therefore, fails and the same is accordingly dismissed.

9. Xerox certified copy of this order, if applied for, be given.