Order of Justice N.K. Jain, M.P. High Court, Indore dated 27.09.1996 dismissing Writ Petition No. 1231/95 of 15 Petitioner Employers

आवेदक

1. Manager,
   Simplex Engg. & Foundry works Ltd.,
   Unit-1, Bhilai
2. Manager,
   Simplex Engg. & Foundry Works Ltd.,
   Unit-II, Bhilai.
3. Manager,
   Simplex Engg. & Foundry Works Ltd.,
   Unit-III, Tedesary, Rajnandgaon.
4. Manager,
   BK. (Beekay) Castings Ltd., Bhilai
5. Manager
   Beekay Engineering Corporation,
   Bhilai.
6. Manager,
   Beekay Engineering Corporation,
   Unit-II, Bhilai.
7. Manager,
   Bhilai Engineering Corporation,
   Urla, Raipur.
8. Manager,
   Bhilai Engineering Corporation,
   Impax, Bhilai.
9. Manager,
   Bhilai Engineering Corporation,
   Unit-II, Bhilai.
10. Manager, Bhilai Wires Ltd.,
    Bhilai.
11. Manager, Kedia Distillary,
    Industrial Estate, Nandini Road,
    Bhilai.
12. Manager, Chattisgarh Distillary,
    Chattisgarh Distillary,
    Kumhari, Dist. Durg.
13. Manager,
    Vishwavishal Engineering Ltd.,
    Bhilai.
14. Manager,
    Simpex Castings Ltd.,
    Unit-1, Bhilai.
15. Manager,
    Simplex Castings Ltd., Urla
    Unit-II, Raipur.

विरोधी पक्षकार

1. Chairman/President,
   State Industrial Court, M.P.
   Indore.
2. Member Judge,
   State Industrial Court, M.P,
   Indore.
3. Member Judge,
   M.P. State Industrial Court,
   Bench, Raipur.
4. State Government of M.P. Bhopal
   through Secretary,
   Labour Department M.P. Bhopal
5. Pragatisheel Engineering Shramik Sangh,
   Housing Board Colony,
   Industrial Estate,
   Bhilai.
6. General Secretary,
   Chhattisgarh Chemicals Mill
   Majdoor Sangh,
   Rajnandgaon (M.P.)

WRIT PETITION No. 1231/95

ORDER

THIS is a petition under Article 226 and 227 of the Constitution of India for issuance of Writ of Certiorari and Mandamus by the petitioners and is directed against the orders of references made by the State Government and the order pased on 31.5.1995 by the Industrial Court, Indore by which the preliminary objection raised by the petitioners as to the tenability of the references has been rejected.

2. Briefly stated the facts and circumstances giving rise to this petition are that, the Government of M.P., respondent No.4 Recording its satisfaction that an industrial dispute exists between the petitioner - employers and their employees and which is not likely to be settled by other means, have with respect to each petitioner and its employees, made reference to the Industrial Court, Bench Raipur, under clause (a) of Sec. 51(1) of The M.P. Industrial Relations Act, 1960 (for short, 'the Act'), for arbitration. Copies of the said references along with the list of workers in respect of each petitioner are at Annexures A-1 to A-15 to the petition. The terms of references which are common in all the cases thus read:

(1) क्या वेतन एवं भत्तों के पुनरीक्षण का औचित्य है? यदि हां तो वेतन, महंगाई भत्तों एवं अन्य भत्तों की क्या योजना

होनी चाहिये इस संबंध में नियोजक को क्या निर्देश दिया जाना चाहिये?

(2) क्या प्रतिवर्ष 15 दिनों का आकस्मिक अवकाश, 10 दिनों का त्यौहारी अवकाश तथा 30 दिनों का चिकित्सा अवकाश दिये जाने का औचित्य है? यदि हां तो इस संबंध में नियोजक को क्या निर्देश दिये जाने चाहिये?

(3) क्या संलग्न में उल्लेखित एम्पलाईज का सेवा पृथकीकरण वैध एवं उचित है? यदि नहीं तो इस संबंध में नियोजक को क्या निर्देश दिये जाना चाहिये?

3. Each petitioner submitted preliminary objection as to the tenability of the reference that exercise of power by the State Government u/s. 51(1)(a) of the M.P.I.R. Act is without jurisdiction. The respondent No.5 resisted the objection. The respondent No.3, Member Judge, Industrial Court, Bench Raipur, after hearing parties, referred the matter to the respondent No.2 for constituting a larger Bench for hearing the objections. Accordingly, respondent No.2 constituted a Division Bench which heard the objection and by a common order dated 31.5.95 (vide Annexure A-47) rejected the objections and directed the references to be placed again before the Raipur Bench of the Court for disposal in accordance with law.

4. The State Government by orders dated 27.7.95 (vide Annexure A-48 to A-62) have amended the original orders of references adding one more term of reference in each case which thus read as follows :

(4)"क्या अनुक्रमांक 3 के संलग्न परिशिष्ट में उल्लेखित सेवा से पृथक किये गये एम्पलाईज को विवाद का निराकरण होने तक अंतरिम राहत प्रदान करने का औचित्य है? यदि हां तो इस संबंध में नियोजक को क्या निर्देश दिये जाना चाहिये."

5. The petitioners have sought quashment of the aforesaid orders of references, the orders of amendment as also the order passed by the Division Bench of Industrial Court inter-alia on the grounds :

(a) That, the respondent No. 5 and 6 had never raised a dispute with the petitioners and had also never given any notice of change in Form 'J' to the petitioners as required u/s. 31 of the Act. They have also not forwarded to the Conciliator in Form 'K' any statement of case as required u/s. 39 (1) of the Act. These provisions, it is contended, are mandatory in nature.

(b) That, since the matter in dispute was never raised in conciliation and no report was sent to the Chief Conciliator u/s. 39(2) of the Act, the present reference is incompetent and with out jurisdiction.

(c) That, no reference could be made without obtaining willingness or consent of the parties for submitting the dispute for arbitration. However, no such consent was obtained from the parties as required u/s. 43(6) and 46(2) of the Act. Since the conciliation proceedings have not been resorted to and the mandatory provisions of law in that regard have not been complied with, the present reference is not competent and not tenable in law.

(d) That, in the lists attached with the references, mostly the names of suspended employees are mentioned and there being no reference about suspension, any reference in their behalf is illegal and lacks mandatory mention.

(e) That, Sec.62 of the Act provides that the dispute regarding termination of services of the employees squarely fell within Schedule II of the Act and as such any proceeding for resolving the dispute could be commenced u/s. 61 before the Labour Court only, and for which a period of limitation of one year from the date of termination is prescribed u/s 62. No such proceedings were, however, commenced within the prescribed period, and the matter having become time barred u/s. 62(1) (A), a right has vested in the petitioners and which cannot be taken away by taking recourse to Sec.51.

(f) That, the dispute regarding termination or suspension of the employees is not such which is not likely to be settled by other means inasmuch as Sec. 31(3) and 61 of the Act provides a complete set of machinery in the hierarchy of Labour Courts to resolve the same, and therefore, no reference could be made under clause (a) of Sec. 51(1) of the Act.

(g) That, even if it is assumed that the alleged termination of employees amounts to reduction of permanent or semi-permanent character in the number of persons employed and which is a matter specified in Schedule I of the Act, then also no reference can be made in view of the proviso (ii) of Sec. 51(1) of the Act. There is mis-joinder of causes of action also.

(h) That, the mandatory provisions of Sec. 51(2) or the Act has not been complied with inasmuch as copy of the report sent by Conciliator under sub-sec. (2) or Sec. 43 and forwarded by the Chief Conciliator to the State government under sub-sec. (3) of the said Section, has also not been made available to the Industrial Court. This also makes the reference as incompetent in law.

6. The petition is resisted by the respondents No. —— to —— who although filed separate returns have taken common grounds. It is stated that the State Government have made the reference in exercise of its executive powers and no writ of certiorari can, therefore, be issued for quashing the orders of reference. It is pointed out that the non-obstante clause contained in Sec. 51 of the Act makes it uncontrollable by other provisions of the Act and, therefore, it was not necessary to resort to the other provisions of the Act before making the reference in question. It is further asserted that no conciliation proceedings had taken place u/s. 41 of the Act and as such there was no question of forwarding report of conciliation u/s. 51(2) of the Act.

7. I have heard Shri A.M. Mathur, learned Sr . Counsel appearing with Shri Rohit Arya, Advt. or the petitioners, Shri L.P. Bhargava, learned Sr. Counsel appearing with Shri Bapat, Adv. For the respondents No. 5 and 6 and Shri Sanjay Seth, learned Dy. Advocate General for the respondent No.4 Government of Madhya Pradesh.

8. Right at the threshold, it needs to be mentioned that in pursuance of State Government's orders dated 27.7.95 adding an additional term of reference as noted in Para 4 above, the Industrial Court Bench Raipur has already passed order dated 12.10.95 granting interim relief. The order remains unchallenged as on today. The petitioners have, however, moved an amendment application (IA No. 4563/96) as late as on 9.9.96 seeking incorporation of an additional relief for quashment of the said order. The order is passed within the jurisdiction of Jabalpur Bench of this Court and which has, therefore, exclusive jurisdiction to entertain any petition challenging the said order. As already pointed out, the amendment has been moved belatedly during the hearing of this petition and I, therefore, decline to allow the same leaving the petitioners free to challenge the order by filing appropriate petition before the Jabalpur Bench of this Court.

9. Coming to the petition, at the outset it may be observed that the references in question are yet to be considered and decided on merit by the Industrial Court, and the order dated 31.5.95 (vide Annexure A-47) of the Industrial Court is only interim in nature made on a limited question as to the tenability of the references. Under the circumstances, I am afraid this Court cannot either under Article 226 or under Articles 227 of the Constitution interfere in the matter at this infant stage. It is well settled that where the Tribunal had jurisdiction to decide the question, the High Court will decline to interfere with the proceedings before the Tribunal or to remove such proceedings, by issuing a writ under Article 226. Dealing with the powers of the High Court under Article 226 to interfere at preliminary stage particularly in matters of labour disputes, the Hon'ble Supreme Court in the case of D.P. Maheshwari Vs. Delhi Admn. (AIR 1984 SC 153) has aptly observed :

"Tribunals entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution, stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the defriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issue more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences."

(emphasis supplied)

10. The Apex Court in another case of Sadhu Ram Vs. Delhi Transport Corpn. (AIR 1984 SC 1467 reiterated:

"The jurisdiction under Art. 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil desputes and to re-adjudicate upon questions of fact accided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional fact which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal was snatched at jurisdiction, the High Court may be justified in interfering. But where the tribunal gets jurisdiction only if a reference is made and it is therefore impossible even to say that the tribunal has clutched at jurisdiction, it is not proper for the High Court to substitute its judgement for that of the Labour Court and hold that the workman had raised no demand with the management and that there was no Industrial Dispute which could be properly refered by the Government for adjudication."

(emphasis supplied)

11. There can be no denial of the fact that the Industrial Court has jurisdiction to decide a reference made u/ s. 51(1) of the Act. That being so, the High Court will decline to interfere with the proceedings before the Tribunal and neither party can be permitted to simultaneously have resort to Art. 226 without waiting for the decision of the Industrial Court. Art. 227 also does not vest the High Court with any unlimited prerogative to interfere in the proceedings of the subordinate Courts or Tribunals. Law on the point is made luculent by the Apex Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim (AIR 1984 SC 38) in following terms. :

"A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law." In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court of Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

(emphasis supplied)

12. It will be thus seen that the petitioners instead of rushing to this Court at this preliminary stage of hearing before the Industrial Court, ought to have waited for its decision in the matter. Needless to add, "the right to life includes the right to livelihood" (See : Olga Tellis' case AIR 1986 SC 180). The petitioner employers who can certainly afford of wait, cannot be, therefore, allowed to exploit jurisdiction to this Court under Art. 226 to avoid decision of issues more vital to the employees.

13. Turning to the merits of the petition, the main thrust of the arguments of Shri A.M. Mathur, learned Sr. Counsel for the petitioners is that Chapter VI and VII of the M.P. Industrial Relations Act, (vide Sec. 31 to 48) provided a complete set of machinery in the hierarchy of Labour Courts, to resolve the dispute if any, and, therefore, no reference could have been made by the State Government under clause (a) of Sec. 51(1) of the Act. It was strenuously contended that the remedy available to the employees under the Act has in fact become time barred in view of the express provision of Sec. 62 of the Act, and a right has, therefore, vested in the petitioners which cannot be taken away by taking recourse to Sec. 51. I am however, not persuaded by the arguments. Although a number of decisions have been cited by either side in support of their rival contentions, the controversy projected in the petition I may say with respect, stands resolved by a Supreme Court decision in the case of A.M. Asocn. Etc. Vs. Textile Labour Assocn. (AIR 1966 SC 497) wherein the Apex Court while dealing with the similar provisions contained thin the Bombay Industrial Relations Act, 1946 has in para 23 held.

"On a fair reading of S.73, it is plain that it deals with the powers of the State Government to make a reference and as such, it is difficult to assume that the said powers of the State Government are intended to be controlled by the provisions of S. 42. Sec. 42 prescribes the procedure which has to be followed by the employer and the employee respectively if either of them wants a change to be effected as contemplated by it. The scheme of S. 42 read along with the other provisions in Ch. VIII clearly shows that the said Chapter can have no application to cases where the State Government itself wants to make a reference."

(emphasis supplied)

14. Sec.73 of the Bombay Act is exactly the same as Sec. 51 of the M.P. Act of 1960. Both the sections contain non-obstante clause in the opening and as observed by the Apex Court in the aforesaid decision.

"The opening clause in S.73 also unambiguously indicates that the power of the State Government to make a reference will not be controlled by any other provision contained in the Act. This clause plainly repels the argument that the provisions of S. 42 should be read as controlling the provisions of S.73 The meaning of the non-obstante clause is clear and it would be idle to urge that the requirements of S. 42 must be satisfied before the power under S. 73 can be invoked by the State Government."

(emphasis supplied)

15. Following the decision in A.M. Assocn's case (supra) this Court in Employees, A.C. Ltd. Vs. Indust. Court (AIR 1969 M.P. 248) has held :

"Notice of change under Sec. 31 of the Madhya Pradesh Industrial Relations Act is no prerequisite for giving rise to an Industrial Dispute. The power of the State Government to make a reference under Sec. 51 is not controlled by any thing contained in Sec. 31. Section 5 opens with a non-obstante clause - "withstanding anything contained in this Act"- "not which makes it plain that a notice of change under Sec. 31 is not a condition precedent for enabling the State Government to make a reference under Section 51."

16. It will be thus seen that Sec. 51 is not controllable by any other provision contained in the Act. Sec. 62 obviously applies to the proceedings before the Labour Court not to the proceedings initiated u/s. 51 of the Act before an Industrial Court. The question of limitation also, therefore, does not arise in the matter.

17. There is also no substance in the argument that matters included in Schedule I cannot be referred u/s. 51 of the Act. Proviso (ii) of Sec. 51(1) of the Act applies only when a reference is made to a Labour Court. The reference in the instant case is made to the Industrial Court not to the Labour Court and it is, therefore, not correct to say that no reference can be made u/s. 51 to the Industrial Court if the matter in dispute is included in Schedule I.

18. As regards the compliance of sub-sec. (2) of Sec.51 regarding sending of report of the Conciliator to the Industrial Court, the very language of sub-sec.(2) leaves no manner of doubt that it is not mandatory to forward the report with the reference itself. The Industrial Court in its order dated 31.5.95 has taken note of this fact and is bound to deal with the question at the appropriate stage. There is factual dispute between the parties on the point inasmuch as it is asserted by the respondent No. 4 Government of Madhya Pradesh that no such conciliation proceedings have taken place and there is thus no report of the conciliation available with the Government. Whether or not any such conciliation proceedings have taken place and what is the effect of not forwarding such report to the Industrial Court are the questions which need to be considered by the Court itself. Suffice to say that the reference is not rendered in - competent on that count alone.

19. As regards the State Government's power to make reference, obviously the powers conferred by Sec. 51 of the Act are executive powers and general rule is that an administrative authority need not give reasons for its decision unless the law or the rules so requires. Sec. 51(1) merely speaks of satisfaction of the State Government and it does not require that the State Government before making any order under that provision, should assign reasons for doing so. Powers though conferred by a statute, nevertheless, are executive powers and the State Government having exercised those powers one way or the other, cannot be called in question by taking recourse to Art. 226. As already pointed out, the Industrial Court is still seized of the matter and I do not, therefore, think it necessary nor proper to go into the details of the matter lest this should prejudice one party of the other at the hearing before the Industrial Court. The petitioners would be better advised to wait for the final outcome of the references in question and then seek appropriate remedy as may be available to them in law.

20. The petition is, therefore, dismissed, but in circumstances without any cost.

Sd/- N.K. Jain
27.9.1996 Judge