1993 (1) GCD 731

S. NAINAR SUNDARAM C. J. AND R. K. ABICHANDANI, J.

Gujarat Mazdoor Panchayat ...Petitioner
Versus
State of Gujarat ...Respondent

Special Civil Application No. 7906 of 1991 D/- 4-9-1992*

*Application to set aside the impugned order dated 27-9-'91 passed by respondent No. 1 declining to make reference, etc.

A) Industrial Dispute Act, 1947 - S. 10 (1) - Reference under - One of the factors weighed with the respondent- Appropriate Government in refusing to make reference was that earlier, demands of similar nature were raised and there was decline to make reference - There was no clarity as to what were the demands in the earlier proceedings and whether the workmen were the same - Approach by the respondent unjustified - He must by referring to the requisite materials find out whether the demands were same and were raised by same set of workmen. He must also go into question whether there could be a reconsideration of the issue Order declining reference was quashed and the respondent directed to consider the question afresh. (Paras 1 , 2)

(B) Industrial Disputes Act, 1947- S. 10 (1) - Reference under - One of the grounds on which reference was declined was that there existed no employer-employee relationship between the parties concerned - Held that the Government could not have pronounced upon the merits of the dispute - It must look into the question without entering into adjudicatory field on this aspect. (Paras 1 , 2)

As we could see from the reasons expressed in the impugned order, two factors weighed with the 1st respondent for declining to make the reference; one is that, earlier, demands of similar nature were raised and there was a decline to make a reference; and the second is that there is no employer and employee relationship between the 2nd respondent and the persons, on whose behalf the demands were raised.

The 1st respondent must look into the question without entering into the adjudicatory field even on this aspect as to whether there exists employer and *[@page302]* employee relationship. (Para 1)

Coming to the first factor, no clarity is there as to what were the demands that were the subject- matter of the earlier proceedings and as to whether the same workmen, who have raised the present demands were the

workmen, who raised the earlier demands. That is why the complaint is made that a bald assertion, as set out in the impugned order, only exposes the non-application of mind. We do not want to express any view on this question. It is for the 1st respondent to find out, by referring to the requisite materials, as to whether the present demands are only the same demands raised earlier and, if so, whether the said demands were raised by the very same set of workmen. The 1st respondent must also go into the question, even if it comes to the conclusion that the same workmen raised the same demands earlier and they were negatived, to find out whether there could be a reconsideration of the issue on relevant considerations in this behalf. (Para 2)

Case Referred :

Telco Convey Drivers Mazdoor Sang and Anr. v. State of Bihar and Others 1989 II LLJ 558 (Para 1)

Appearances :

Mr. M. M Shahani, Advocate, for the petitioner
Mr. Buch, for Mr. K. S. Nanavati, Advocate, for the 1st respondent
Mr. Mahul Rathod, A. G. P. for the 2nd respondent

PER S. NAINAR SUNDARAM, C. J.:-

1. By the order impugned in this Special Civil Application, there is a decline to refer the dispute raised by the petitioner. The order impugned is dated 27-9-1991. There are four demands raised by the petitioner against the 2nd respondent. We need not dwell on the nature of the demands, because, the grievance expressed by the petitioner is with reference to the propriety of the reasons expressed for the decline to make the reference. The reasons expressed in the impugned order, which is in Gujarati, run as follows:

The English translation of the same, which we are directing the Registry of this Court to render, stands annexed to this order. As we could see from the reasons expressed in the impugned order, two factors weighed with the 1st respondent for declining to make the reference; one is that, earlier, demands of similar nature were raised and there was a decline to make a reference; and the second is that there is no employer and employee relationship between the 2nd respondent and the persons, on whose behalf the demands were raised. Taking up the second factor, we find that what the 1st respondent did squarely comes within the mischief of the *ratio decided* of the decision of the Supreme Court in *Telco Convoy Drivers Mazdoor Sang and Another* v. *State of Bihar and Others,* 1989 II L. L. J. 558. In that decision, the Apex Court in the land discountenanced a case where the Government

pronounced upon the merits of the dispute by holding that there is no relationship of employer and employee. Repelling the contention that unless there is a relationship of employer and employee *[@page303]* or, in other words, unless those who are raising the dispute are workmen, there cannot be any existence of 'industrial dispute'., within the meaning of the expression as defined in Section 2 (k) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'The Act'). This is what the Supreme Court, in the above pronouncement, observed :-

"xxx xxx xxx

Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10 (1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, (1985-IS-LLJ-187); M. P. Irrigation Karmachari Sangh v. State of M. P. (1985-I-LLJ-519); Shambu Nath Goyal v. Bank of Baroda, Jullunder, (1973-I-LLJ-484).

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10 (1) of the Act. As has been held in M. P. Irrigation Karmachari Sangh's case (supra), there may be exception cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and to allow the Government to do so would be to render Section 10 and Section 12 (5) of the Act nugatory. xxxxxx."

When we take note of what has been ruled by the Supreme Court, as above, we cannot uphold the second factor, which weighed with the 1st respondent when it declined to make a reference. The 1st respondent must look into the question without entering into the adjudicatory field even on this aspect as to whether there exists employer and employee relationship.

2. Coming to the first factor, no clarity is there as to what were the demands that were the subject matter of the earlier proceedings and as to whether the same workmen, who have raised the present demands were the workmen, who raised the earlier demands. That is why the complaint is made that a bald assertion, as set out in the impugned order, only exposes the non-application of mind. We do not want to express any view on this question. It is for the 1st respondent to find out, by referring to the requisite materials, as to whether the present demands are only the same demands raised by the very same set of workmen. The 1st respondent must also go into the question, even if it comes to the conclusion that the same workmen raised the same demands earlier and they were negatived, to find out whether there could be a reconsideration of the issue on relevant consideration in this behalf. We are obliged to take note of the lack of approach on the part of the 1st respondent *[@page304]* to the question in the manner delineated above and the feature also obliges us to frown upon the impugned order. There is a need on the part of the 1st respondent to consider the question afresh in the light of what we have observed, as above, and, we are sure that the 1st respondent will avoid the infirmities, which we have noted above and which alone constrained us to interfere in writ powers. There is a request put forth by both the sides that while the 1st respondent does this re-exercise on the question, the parties may be permitted to place additional materials from their respective point of view.

There is also a request by Mr. N. R. Shahani, learned Counsel appearing for the petitioner, that a time limit may be fixed for the 1st respondent to consider the question afresh and decide over it and until that is done, the status quo, prevailing as on date, may be maintained. The learned Counsel for the petitioner points out that, from September 1989, this Court has shown the indulgence of granting interim relief. Mr. Buch, representing Mr. K. S. Nanavati, learned Counsel for the 2nd respondent states that the status quo, as on date, with reference to the individuals, who raised the demands and whose cause the petitioner represents, shall be maintained by his client for a period of six weeks.

Accordingly, we allow this Special Civil Application; set aside the order impugned in the Special Civil Application and gives the following directions :-

(i) The question of making reference shall be considered afresh by the 1st respondent in the light of the observations made, as above;

(ii) The parties shall, if they prefer to place additional materials from their respective point of view before the 1st respondent, do so within a period of one week from today before the 1st respondent;

(iii) The 1st respondent shall consider the question, as per clause (i) supra, taking note of the additional materials, if any, placed by the parties, as per clause (ii) supra, and render a decision thereon within a period of four weeks from today;

(iv) The 1st respondent shall communicate its decision to the parties within a period of one week from the date of making the decision;

(v) We record the statement made by Mr. Buch, representing Mr. K. S. Nanavati, learned Counsel for the petitioner, as set down above.

This Special Civil Application is disposed of in the terms, with no order as to costs.

Direct service to the 1st respondent is permitted.

Annexure to the Order, dated 4th September, 1992 in Special Civil Application No. 7906 of 1991
..... (Translation of- marked portion Flag 'A')

Annexure - 'A'

x x x

x x x

Reasons:

Salary and other allowances to these workmen are paid through the contractor.

And decision was taken not to refer this very kind of case, i.e. Conci. Case No. 1/88 to the Industrial Tribunal for adjudication. In this very matter, demand *[@page305]* has been put up to refer the case to the Industrial Tribunal for re-adjudication. As there is no new issue in this case and there is no relationship of the employer and the employee.

(NVA) Order accordingly.