

Gauhati High Court

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Indian Oil Corporation Ltd. vs Presiding Officer, Central ... on 22 June, 2004

Equivalent citations: (2006) 1 GLR 640, (2005) IILLJ 850 Gau

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Bench: B Sharma

ORDER

B.K. Sharma, J.

1. The basic issue raised in this writ proceeding is as to whether on permanent closing down of a place of employment or part thereof as defined under Section 2(cc) of Industrial Disputes Act, 1947, leading to termination of services of contract labourers can be said to be an industrial dispute as defined in Section 2(k) of the Act, so as to refer the same for adjudication as a "Reference" as contemplated under Section 10 of the Act.

2. The facts leading to the initiation of the present writ proceeding are not in dispute. The petitioner is a Government Company under the Companies Act, 1956 and carries on business inter alia of refining and distributing petroleum products including the Liquefied Petroleum Gas (LPG). It has refineries in various parts of India including one in Guwahati which produces LPG wherein it had an LPG bottling Plant up to October 30, 1999

3. A decision was taken to close the said LPG bottling plant with effect from October 1, 1999 and to construct a new and larger LPG bottling plant at a place called Mirza at a distance of 35 km from Guwahati. The plant at Mirza started production from November, 2000.

4. Various activities in the said bottling plant were managed through the licensed contractor in accordance with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The term of Contract was to expire on September 30, 1999. The respondents No. 3 to 23 were employed by the said contractor who is the respondent No. 24 in the present proceeding. As the petitioner decided to close the LPG bottling plant with effect from October 1, 1999, there was no question of renewal of the contract with the respondent No. 24, who was a local contractor and accordingly he was informed of the same. Thereupon the said respondent served a notice on the respondents No. 3 to 23 that their employment stood terminated because of such closure of the plant.

5. The respondent No. 24 by his letter dated September 27, 1999 addressed to the petitioner objected to the closure of the LPG bottling plant and threatened industrialization unrest unless the "service" of the LPG bottling plant were continued. Eventually the matter was agitated before the Assistant Labour Commissioner (Central), Guwahati before whom the petitioner except on one occasion, declined to appear on the ground that the process initiated by him was not a conciliation in terms of Industrial Disputes Act, 1947, there being no relationship of employer and employees between the petitioner and the respondents No. 3 to 23 and the respondent No. 24 being not a representative of the petitioner's workmen. The Assistant Labour Commissioner treated the conciliation proceeding to have failed and submitted his failure report dated December 24, 1999. Thereafter by an order dated May 19, 2000 the respondent No. 2 referred the alleged industrial dispute purportedly existed between the petitioner and its workmen to the Central Government Industrial Tribunal, Guwahati for adjudication of the following issue:

"Whether the termination of 21 contract labourers as per list enclosed engaged by the IOC (MD) Guwahati through Sri Subin Das contractor working in the LPG Plant at Guwahati Refinery with effect from October 1, 1999 as a result of Committee report is justified ? If not, to what relief these workmen are entitled?"

6. It is the legality and validity of the aforesaid order which is the subject matter of challenge in the present proceeding. According to the petitioner, termination of the employment of contract labourers by the contractor cannot be a subject matter for an industrial dispute and that the reference itself having indicated the termination of services of the respondents No. 3 to 23 upon closure of the LPG plant could not have been made the subject matter of dispute and reference. Further stand of the petitioner is that the demand made on behalf of the respondents No. 3 to 23 being the one that the LPG plant should not be closed, there could not have been the kind of reference as has been made. In a nutshell it is the stand of the petitioner that the respondents No. 3 to 23 being not their workmen and the respondent No. 24 being not the representative of the petitioner's workmen, there was no employer employee relationship between the petitioner and the respondents No. 3 to 23 and that the said respondents being the contract labourers under the respondent No. 24 who was specifically engaged to carry out the contract work in the LPG plant, upon closure of the same and dispensation of the services of the respondents No. 3 to 23 by the respondent No. 24 cannot give rise to any industrial dispute warranting any reference for the same.

7. The respondent No. 24 purportedly espousing the case of the respondents No. 3 to 23 has filed an affidavit-in-opposition controverting the stand of the petitioner. According to them, the works in the LPG plant are perennial in nature and that they have been serving since long under the petitioner through different contractors and thus the petitioner being the principal employer cannot disown its responsibility towards the respondents No. 3 to 23. The petitioner has submitted its reply affidavit reiterating its stand in the writ petition and disowning its responsibility towards the respondents No. 3 to 23, on ground of they being the employees of the respondent No. 24.

8. Mr. A. Choudhury, learned senior counsel, assisted by Mr. S. Saikia, learned advocate appearing for the petitioner, during his arguments reiterated the stand in the writ petition and reply affidavit and pressed into service the following decisions:

Indian Hume Pipe Co. v. Their Workmen AIR 1968 SC 1002 : 1969-I-LLJ-242.

Workmen of FCI v. FCI AIR 1985 SC 670 : 1985 (2) SCC 136 : 1985-II-LLJ-4.

National Engineering Industries Ltd. v. State of Rajasthan AIR 2000 SC 469 : 2000 (1) SCC 371 : 2000-I-LLJ-247.

Nedungadi Bank v. K.P. Madhavankutty AIR 2000 SC 839 : 2000 (2) SCC 455 : 2000-I-LLJ-561.

Delhi Cloth and General Mills v. Workmen AIR 1967 SC 469 : 1967-I-LLJ-423.

Indian Oil Corporation v. Presiding Officer, Central Govt. Industrial Tribunal 1999-II-LLJ-904 (Gau-DB).

9. On the other hand Mr. K.K. Mahanta, learned counsel appearing for the respondents, during his argument questioned the very validity of initiation of the writ proceeding. He submitted that the petitioner being a Government Company ought not to have taken recourse to the present proceeding without waiting for finalisation of the reference by the Industrial Tribunal. According to him the reference was made by the competent authority of the Government having regard to the matter incidental to the dispute and taking into account the background and all aspects of the matter. Reiterating the stand in the affidavit, he submitted that the nature of work used to be performed by the respondents being perennial and there being no closure of the LPG plant, and the same having only been shifted to another place, there was no occasion for the petitioner to terminate the services of the respondents. Mr. Mahanta, placed reliance on the following decisions:

Sapan Kr. Pandit v. U.P. State Electricity Board AIR 2001 SC 2562 : 2001 (6) SCC 222 : 2001-II-LLJ-788,

Steel Authority of India Ltd. v. National Union of Water Front Workers AIR 2001 SC 3527 : 2001 (7) SCC 1 : 2001-II-LLJ-1087.

10. Mr. C. Choudhury, learned Central Govt. Standing Counsel justified the reference made by the Central Government and urged not to interfere with the same. In reply to the arguments advanced by the learned counsel for the respondents, Mr. A. Choudhury, learned senior counsel, appearing for the petitioner placed reliance on the aforesaid two decisions i.e. Delhi Cloth General Mills v. Workmen (supra) and Indian Oil Corporation v. Presiding Officer, Central Govt. Industrial Tribunal (supra) and submitted that merely because the petitioner is a Government Company, same would not preclude or disentitle it to challenge the validity of the reference itself made by the Central Government and that the arguments advanced by learned counsel for the respondents that the reference takes care of the matter incidental thereto is fallacious inasmuch as the Tribunal cannot go beyond the reference made to it. He submitted that the reference itself having admitted that the respondents No. 3 to 23 were the contract labourers, there could not have been any reference on ground of existence of any industrial dispute between the petitioner and the said respondents.

11. The factum of closure of the LPG plant in question is not in dispute, rather has been admitted by the respondents. The fact that they were contract labourers under the respondent No. 24 is also not in dispute. However, it is the stand of the respondent that the work in question was perennial in nature and that they having been employed under the petitioner who is the principal employer and having regard to the long years of services rendered by them. Their such services could not have been terminated and thus the reference made by the Central Government is fully justified.

12. The term "closure" has been defined under Section 2(cc) of the Industrial Disputes Act, 1947 to mean the permanent closing down of the place of employment or part thereof. In the instant case, the LPG bottling plant in question has been closed which position is an admitted one. The Apex Court in the case of Indian Hume Pipe Co. Ltd. (supra), held that once the Tribunal finds that an employer has closed its factory as a matter of fact it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees, the closure was not justified. It held that such closure cannot give rise to an industrial dispute.

13. In the case of the Workmen of FCI (supra), the Apex Court held that where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Referring to the definition "workmen" in the Industrial Disputes Act, 1947, the Court observed that essential condition of the person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. It observed that unless a person thus employed, there can be no question of his being a "workman" within the definition of the term as contained in the Act.

14. In the instant case, as noticed above, there is no dispute, rather admitted by the respondents that the LPG bottling plant has been closed and shifted to another place and that the respondents were the contract labourers under the respondent No. 24. It is in this context, the aforesaid two decisions have been referred to. Although the decision in Indian Hume Pipe Co. (supra) was in relation to closure of a factory which is not the case in hand inasmuch as only the LPG bottling plant of the petitioner company has been closed, a reference to Section 2(cc) relating to "closure" makes the position clear. The term "closure" means the permanent closing down of a place of employment or part thereof. The basic question is as to whether the plant in question, works pertaining to which the respondents were employed through contractor having been closed, can there be an Industrial dispute giving rise to the kind of reference as has been made in the instant case. On both the counts i.e. the closure of the LPG bottling plant and the respondents being not the workmen as defined in the Industrial Disputes Act, 1947, the answer is in the negative applying the ratio laid down by the Apex Court in the aforesaid two cases. The contention of the petitioner also finds support from the decisions of the Indian

Oil Corpn. (supra) reiterated in another Division Bench decision of this Court as reported in Indian Oil Corporation Ltd. v. Presiding Officer (supra).

15. In the aforesaid decision of the Division Bench, labourers employed by the contractor in the bottling plant of Indian Oil Corporation seeking regularisation of their services agitated the matter that they were employed by the Indian Oil Corporation in the bottling plant. A reference was made as to whether the action of the management of the Indian Oil Corporation in not regularising the services of the contractual workers was justified. The Division Bench held that in absence of any relationship of employer and employee as explicit on the face of the reference, the dispute could not be brought within the fold of "Industrial Dispute" as defined in Section 2(k) of the Industrial Disputes Act, 1947.

16. The decision in National Engineering Industries Ltd. (supra) and the Nedungadi Bank Ltd. (supra) were relied upon by the learned senior counsel for the petitioner to bring home the point that the High Court has jurisdiction under Article 226 of the Constitution of India to entertain a writ petition when there is allegation that there is no industrial dispute. The Apex Court held that the question of jurisdiction of Industrial Tribunal could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial dispute which would clothe the appropriate Government with the power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended, appropriate Government lacks power to make any reference. The Apex Court held that if it is incorrect to say that once a reference has been made under Section 10 of the Act a Labour Court has to decide the same and High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. The Apex Court observed that the High Court can exercise its power under Article 226 of the Constitution of India to consider the question of very jurisdiction of the Labour Court. Same is the case in hand. The petitioner has questioned the very validity of the reference made by the Central Government and thus it cannot be said that the writ jurisdiction of the High Court is ousted in view of the reference made to the Industrial Tribunal.

17. The decision of the Apex Court in the case of the Delhi Cloth & General Mills (supra) was relied upon to counter the arguments of the learned counsel for the respondents that the reference in question was made by the Central Government having regard to the background and different aspects of the matter. In the said case, the Apex Court held that the Tribunal cannot go beyond the reference.

18. I may now examine the applicability of the decisions relied upon by Mr. Mahanta, learned counsel appearing, for the respondents and test the same in the touch-stone of the issue raised in this proceeding. The Apex Court in the case of Steel Authority of India Ltd. (supra) emphasised that after the advent of the Constitution of India, the State is under an obligation to improve the lot of the work force. It further emphasised that in interpreting a beneficial legislation enacted to give effect to directive principle of state policy which is otherwise constitutionally valid, the consideration of the Court cannot be divorced from those objectives. The observations of the Apex Court of the judgment to which the reference was made undoubtedly are the well cherished principles of the Constitution of India in an interpretation relating to beneficial legislation. However, the Apex Court also emphasised that the principle that beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act, what the Legislature has not provided whether expressly or by necessary implication, or substitution remedy or benefits for that provided by the Legislature. However the same do not in any manner help to decide the controversy involved in this proceeding.

19. In the case of Sapan Kr. Pandit (supra), the Apex Court in the context of the case was considering the factual position whether the dispute did exit on the date of reference and the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. The question arose in the context of the plea raised relating to delay in making the reference. The Apex Court found that the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons and that did not cause the dispute to wane into total eclipse. Same is not the case in hand. Nobody has questioned the reference on the ground of any delay. What is under challenge is the very inception and initiation of the

reference in question. Thus this case also does not help the case of the respondents in any manner.

20. In the cases of ONGC v. Collector of Central Excise as reported in 1992 Suppl (2) SCC 432 and 1995 Suppl (4) SCC 541, the Apex Court having regard to the obvious object of referring the dispute in question in those cases to a committee observed in the context of those cases that the public sector undertaking of the Central Government and the Union of India should not have brought their litigation in Court and that the Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. In the instant case, the very validity of a reference is under challenge and not the kind of dispute with which the Apex Court in those cases was concerned. Further it is not a dispute between the public sector unit and the Government but is a dispute, between the public sector unit and the workmen. The Government having made the reference is no longer interested in the matter and stands outside as observed in the case of State of Bihar v. D.N. Ganguly, reported in AIR 1958 SC 1018 : 1958-II-LLJ-634.

21. There cannot be any comparison of a reference to a committee with the kind of reference with which the present proceeding is concerned. The Apex Court decisions as noticed above i.e. National Engineering Industries Ltd. (supra), Nedungadi Bank (supra) also come into play in the context by which the Apex Court has recognized the power of the Writ Court to consider the question of very jurisdiction of Labour Court and the Industrial Tribunal. Thus the aforesaid two cases of ONGC (supra) do not help the case of the respondents. Further the Apex Court in the said two decisions did not lay down any ratio as such of universal application in all the disputes including the kind of dispute and reference with which the present proceeding is concerned. Needless to say that the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it (Lord Halsbury in *Quinn v. Leatham*, 1901 AC 495).

22. Above being the position which has emerged on the basis of factual and legal aspect of the matter, the issue raised in the present writ proceeding and as formulated above is liable to be answered in the negative against the respondents. The petitioner succeeds on both counts, viz. (i) there cannot be a reference raising an industrial dispute based on the closure of the LPG bottling plant in question which position is also admitted by the respondents and (ii) the respondents being not within the definition of workmen under the Industrial Disputes Act, 1947, no dispute can arise between the petitioner and the said respondents relating to the issue raised, they being the employees of the respondents No. 24. Consequently the impugned order of reference dated May 19, 2000 issued by the respondent No. 2 stands set aside and quashed. This will however, not preclude the respondents in seeking their remedy under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and the Rules framed thereunder, if available to them and if so advised.

23. Writ petition stands allowed. No order as to cost.