NATIONAL COUNCIL FOR CEMENT AND BUILDING MATERIALS

v.

STATE OF HARYANA AND OTHERS

FEBRUARY 15, 1996

[KULDIP SINGH AND S. SAGHIR AHMAD, JJ.]

Labour Law :

Industrial Disputes Act, 1947 : Sections 10(4), 2(j), (k) and (s).

Industrial Dispute—Reference—Preliminary and main issues—Procedure for determination of—Preliminary issue—To decide if activities constituted "industry"—Framed to delay adjudication—Held : Industrial Tribunal rightly decided to hear the same along with the main issue—High Court also rightly refused to interfere under Article 226 of the Constitution with such interlocutory order of the Tribunal—Constitution of India, Article 226—Industrial Employment (Standing Orders) Act, 1946.

Industrial Tribunal—Practice and Procedure—Scope of interference with.

An association of the employees of the appellant – society filed a writ petition in the High Court for a direction to the appellant to have its own certified Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946. The writ petition was resisted by the appellant on the ground that it was not an"industry" and, therefore, not liable to make its own certified standing orders. Pursuant to the direction by the High Court, the dispute whether the appellant was an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 was referred to the Industrial Tribunal by the State. With the consent of the parties, the Industrial Tribunal framed an additional issue as to whether the reference was bad in law. Originally this issue was to be decided as a preliminary issue but by a subsequent order the Tribunal directed that this issue as also other issues would be considered together. The appellant challenged the above order in the High Court and the appeal was dismissed. Aggrieved by the High Court's Judgment the appellant preferred the present appeal.

A **Dismissing the appeal, this Court,**

HELD : 1.1. Usually, whenever a reference comes up before the Industrial Tribunal, the Establishment, in order to delay the proceeding, raises the dispute whether it is an "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947; or whether the dispute referred to it for B **adjudication is an "industrial dispute" within the scope of Section 2(k) of the Act, and also whether the employees are "workmen" within the meaning of Section 2(s) of the Act. A request is made that these questions may be determined as preliminary issues so that if the decision on these questions are in the affirmative, the Tribunal may proceed to deal with the real** C **dispute on merits. The appellant is no exception and it has also raised the same question which has brought this industrial litigation, still at its infancy, to this Court. [693-C-D]**

1.2. The Tribunal subsequently rightly decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this D **stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceeding pending before the Industrial Tribunal at an** E **interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions. [694-E-G]**

Bangalore Water Supply & Sewerage Board **v.** *A. Rajappa & Ors.,* **[1978] 3 S.C.R. 207, referred to.**

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Cooper Engineering Ltd. **v.** *P.P. Mundhe,* **[1976] 1 S.C.R. 361;** *S.K. Verma* **v.** *Mahesh Chandra,* **[1983] 3 S.C.R. 799;** *D.P. Maheshwari* **v.** *Delhi Administration,* **[1983] 3 S.C.R. 949 and** *Workmen* **v.** *Hindustan Lever Ltd.,* **[1985] 1 S.C.R. 641, relied on.**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3519 of 1996.

From the Judgment and Order dated 22.9.95 of the Punjab & Haryana High Court in C.W.P. No. 14201 of 1995.

H A.K. Sikri and Ms. Madhu Sikri for the Appellant.

The Judgment of the Court was delivered by A

S. SAGHIR AHMAD, J. Leave granted.

2. After the decision of this Court in *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa & Ors.,* (1978) 1 Labour Law Journal 349=[1978] 3 SCR 207 in which a comprehensive definition of the word B "Industry" was attempted to be given followed by legislative changes in the Industrial Disputes Act, it was thought that the Management or Establishments would give up their old habit of raising preliminary issues in Industrial References as to "whether they are an 'Industry' within the meaning of the Industrial Disputes Act or not", but Samuel Johnson's C observation that "one of the maxims of civil law is that definitions are hazardous" is still true and this question continues to be raised almost in every case before the Tribunal.

3. The appellant is no exception and it has also raised the same question which has brought this industrial litigation, still at its infancy, to D this Court.

4. The appellant is a society registered under the Societies Registration Act, 1960 and respondent no. 3 is an association of its employees. In Writ Petition No. 12525 of 1991 filed in the High Court of Punjab & E Haryana, respondent no. 3 prayed for a direction that the appellant should, like other industrial establishments, have its own certified standing orders made under the Industrial Employment (Standing Orders) Act, 1946. The Writ Petition was resisted by the appellant on the grounds, *inter alia,* that it was not an "industry" within the meaning of the Industrial Disputes Act and, therefore, there was no occasion for it to make its own certified F standing orders under the Industrial Employment (Standing Orders) Act, 1946. The High Court by its Order dated 24th of March, 1992 directed the State of Haryana to refer the dispute between the parties to the Industrial Tribunal and acting on that basis, the State of Haryana made the following reference to the Industrial Tribunal :-

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> "Whether the establishment "NATIONAL COUNCIL FOR CEMENT AND BUILDING MATERIALS" M-10, SOUTH EXTENSION-II, RING ROAD, NEW DELHI, is an "INDUSTRY" within the meaning of definition of the terms "INDUSTRY" as given in the Industrial Disputes Act." H

A 5. The appellant has already put in appearance and has filed a written statement before the Tribunal in which he has raised certain preliminary objections including the objection that it was not an "Industry" and consequently no reference could be made to the Industrial Tribunal.

B 6. On 10th May, 1994, the Industrial Tribunal passed the following orders :-

> "Both the sides agree that the following additional issue be framed and decided as preliminary issue :
>
> C (a) Whether the reference is bad in law ?
>
> O.P. Mgt."
>
> To come up on 26.7.94 for evidence and arguments in this issue."

7. The Industrial Tribunal, however, by its order dated 22nd of August, 1995 directed that the preliminary issue as also other issues will be D considered together. Its order read as under :-

> "Affidavits are not filed. Reply to the application moved on 27.7.95 is filed after hearing the Ars for the parties at length, I feel it shall be in the fitness of things that the parties file their affidavits in
> E support of their rival contentions. The preliminary issues as well as the other main issue may be considered later on. To come up on 26.9.95 for filing affidavits."

8. The appellant challenged the above order in C.W. No. 14201 of 1995 in the High Court of Punjab & Haryana but it was dismissed on 22nd F October, 1995. The appellant has now come up in appeal.

9. The reference of a dispute to the Industrial Tribunal is made under Section 10 of the Act. Sub-section (4) of Section 10 provides as under :-

> G "(4) Where in an order referring an industrial dispute to 'a Labour Court, Tribunal or National Tribunal'(h) under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, "the Labour Court or the Tribunal or the National Tribunal, as the case may be'(i) shall confine its adjudication to those points and matters incidental
> H thereto"(j).

10. This sub-section indicates that the extent of jurisdiction of the adjudicatory Tribunals is confined to the points specified in the order of reference or matters incidental thereto. Matters which are incidental to the reference may, sometimes, assume significant proportions and may relate to questions which go to the root of the jurisdiction of the Tribunal as, for example, question relating to the nature of the activity of the Employer as to whether it constitutes an industry or not, as has been done in the instant case. It is on the determination of this question that the jurisdiction of the Tribunal to adjudicate upon the reference rests.

11. Usually, whenever a reference comes up before the Industrial Tribunal,. the Establishment, in order to delay the proceedings, raises the dispute whether it is an "industry" as defined in Section 2(j); or whether the dispute referred to it for adjudication is an "industrial dispute" within the scope of Section 2(k) and also whether the employees are "workmen" within the meaning of Section 2(s). A request is made with that these questions may be determined as preliminary issues so that if the decision on these questions are in the affirmative, the Tribunal may proceed to deal with the real dispute on merits.

12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.

13. This Court in *Cooper Engineering Ltd.* v. *P.P. Mundhe,* (1975) 2 Labour Law Journal 379=[1976] 1 SCR 361, in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in *S.K. Verma* v. *Mahesh Chandra,* (1983) Labour and Industrial Cases 1483=[1983] 3 SCR 799, this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of

A the employer to delay and defeat the purpose of adjudication on merits.

15. In *D.P. Maheshwari* v. *Delhi Administration,* (1983) Labour and Industrial Cases 1629 = [1983] 3 SCR 949, this Court speaking through O. Chinnappa Reddy, J. observed that the policy to decide the preliminary
B issue required a reversal in view of the "unhealthy and injudicious practices resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the didlatory practices of Civil Courts". The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of
C any litigation at the interlocutory stage. To the same effect is the decision in *Workmen employed by Hindustan Lever Ltd.* v. *Hindustan Lever Ltd.,* (1984) Labour & Industrial Cases 1573 = [1985] 1 SCR 641.

16. The facts in the instant case indicate that the appellant adopted
D the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an 'Industry' within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be
E heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other
F issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above and we do
G not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs.

V.S.S. Appeal dismissed.