M/S. U. P. Electric Supply Co., Ltd vs The Workmen Of M/S. S. N. ... on 8 March, 1960

Equivalent citations: 1960 AIR 818, 1960 SCR (3) 189, AIR 1960 SUPREME COURT 818, 1960 SCJ 705, 1960 3 SCR 189, 1960 (1) LABLJ 806

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, P.B. Gajendragadkar

PETITIONER:
M/s. U. P. ELECTRIC SUPPLY CO., LTD.

Vs.

RESPONDENT:
THE WORKMEN OF M/s. S. N. CHOUDHARY,CONTRACTORS AND ANOTHER

DATE OF JUDGMENT:
08/03/1960

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B.

CITATION:
1960 AIR 818 1960 SCR (3) 189

ACT:
Industrial Dispute-Tyibunal deciding issue not referred to it--jurisdiction-U.P. Industrial Dispute Act, 1947 (XXVIII Of 1947), ss. 34 (Proviso) 5, 8.

HEADNOTE:
The appellant company used to employ Messrs. S. M. Choudhary as its contractors for doing certain work for it and the contractors in their turn used to employ some workmen to carry out the work which they took on contract. A dispute having arisen between the contractors and their workmen an application was made before the conciliation board by the workmen in which both the company and the contractors were parties and four matters were referred, namely, non-grant of bonus for two years, non-grant of festival holidays, non-fixation of minimum wages of those workmen at par with the

workmen of the company and non-abolition of the contract system. As conciliation failed the Government referred the dispute to the Industrial Tribunal under the U.P. Industrial Disputes Act in which only three points out of the four mentioned above were referred and the question of non-abolition of the contract system was not referred. The parties to this reference were the contractors and their workmen and not the appellant company. By a subsequent notification, however, the Government impleaded the Company as a party to the dispute but did not amend the previous referring order by
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adding the fourth point of dispute which was before the conciliation board, namely, the non-abolition of the contract system. The Industrial Tribunal framed a number of issues the most important of which was whether the workmen concerned were the employees of the appellant company or of the contractors and came to the conclusion that those workmen were in fact and in reality the employees of the company. On appeal by the company by special leave,
Held, that on such a reference there could be no jurisdiction in the tribunal to decide the question whether these workmen were the workmen of the company or of the contractors, for such a question was not referred to the tribunal.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeal No. 481 of 1958. Appeal by special leave from the Award dated June 29, 1957, of the State Industrial, Tribunal U.P. Allahabad, in Ref. No. 98 of 1956.

M.C. Setalvad, Attorney-General for India, S. N. Andley, J. B. Dadachanji, Rameshuar Nath and P. L. Vohra, for the, appellants.

A. D. Mathur, for respondent No. 1.

G. C. Mathur and C. P. Lat, for respondent No. 2. G. N. Dikshit and C. P. Lal, for the intervener. 1960. March, 8. The Judgment of the Court was delivered by WANCHOO, J.-This is an appeal by special leave against the order of the Industrial Tribunal, Allahabad. The appellant is the U. P. Electric Supply Co. Ltd., Lucknow, (hereinafter called the company). It appears that the company used to employ Messrs. s M. Choudhary (hereinafter referred to as the contractors) as its contractors for doing certain work for it. The contractors in their turn used to employ a number of persons to carry out the work which they had taken on contract. A dispute arose between the contractors and their workmen in 1956 and an application was made on June 6, 1956, by the workmen before the conciliation board. To this application both the company as well as the contractors were parties and four matters were referred by the workmen to the conciliation board, namely, (i) non-grant of bonus for the years 1953-54 and 1954-55; (ii) nongrant of festival holidays; (iii) non-fixation of minimum

wages of these workmen at par with the workmen employed by the company; and (iv) nonabolition of the contract system. Efforts at conciliation failed and thereupon the Government of Uttar Pradesh made a reference to the Industrial Tribunal under the U. P. Industrial Disputes Act, No. XXVIII of 1947, (hereinafter called the Act). In this reference only three points were referred out of the four which were before the conciliation board, namely, those relating to bonus, festival holidays and payment of wages to these workmen at par with the workmen of the company. The fourth point which was raised before the conciliation board (namely, non-abolition of the contract system) was not referred. The parties to this reference were two, namely-(i) the contractors and (ii) their workmen. The appellant was not a party to this reference. On August 13, 1956, another notification was issued by the U. P. Government under ss. 3, 5 and 8 of the Act by which the company was impleaded as a party to the dispute referred by the notification of July 31, 1956. It is remarkable, however, that the matters of dispute which were specified in the reference dated July 31, 1956, were not amended as they could have been under the proviso to s. 4 of the Act, by adding the fourth point 'of dispute before the conciliation board, namely, the non-abolition of the contract system. When the matter came up before the industrial court it framed a number of issues; and the first and most important issue ran thus: "Are the workmen concerned employees of the U. P. Electric Supply Co. Ltd., Lucknow or of Messrs. S. M. Chaudhary, contractors ? "

> The main objection of the company was that the dispute, if any was between the contractors and their employees and that there was no dispute between the company and its workmen. It was further objected that there was no valid or legal order of the Government referring any dispute between the company and its workmen to the tribunal and therefore the tribunal had no jurisdiction. On the merits it was urged that the workmen concerned were not the workmen of the company and there was no relationship of employer and employee between the company and these workmen and therefore the company could not be regarded as a party to the dispute between the contractors and their workmen.
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> It is therefore clear that the main question which was considered by the tribunal was whether the workmen concerned were the workmen of the company or of the contractors. As the tribunal itself says, " the crux of the whole case was whether the workmen concerned were the employees of the company ". The tribunal went into the evidence in this connection and came to the conclusion that these workmen were in fact and in reality the employees of the company. The main contention on behalf of the company before us is that even assuming that the Government had power under s. 5 read with cl. 12 of G. O. No. U-464 (LL)XXXVI-B- 257(LL)/1954, dated July 14, 1954, to implied the company as a party, the main issue decided by the tribunal was not referred to it and the tribunal could only decide the three matters of dispute included in the order of reference of July 31, 1956. Therefore, in so far as the tribunal went beyond the, three matters of dispute specified in the reference and decided the question whether the workmen concerned were in the employ of the company or of the contractors it was acting without jurisdiction as this matter was never referred to it.

We are of opinion that this contention must prevail. As we have already pointed out, there were four matters before the conciliation board including the question of non-abolition of the contract system. Further before the conciliation board not only the contractors but the company was also a party, for obviously the question of non-abolition of the contract system would necessitate the presence of the company as a party to the proceedings. When however the Government referred the dispute to the tribunal on July 31, it did not include the fourth item which was before the conciliation board relating to the non-abolition of the contract system among the matters in dispute. It also did not include the company as one of the parties to the dispute, for the reference-order refers only to two parties to the dispute, namely, the contractors and their workmen. On such a reference there could be no jurisdiction in the tribunal to decide the question whether these workmen were the workmen of the company or of the contractors, for such a question was not referred to the tribunal. It is true that on August 13, 1956, the company was impleaded as a party to the dispute referred by the notification of July 31 ; but the matters in dispute remained unmended, and the question of non-abolition of the contract system or the question whether these workmen were the employees of the company in fact and in reality was not included in the matters of dispute by amendment under the proviso to s. 4 of the Act. In these circumstances it is immaterial to consider whether the impleading of the company as a party on August 13, 1956, was legal and valid or not. Assuming that it was legal and valid, the fact remains that issue No. 1 set out above by us which is undoubtedly the crux of the question in this case was not referred to the tribunal at all and did not arise out of the three matters of dispute specified in the reference order of July 31, 1956. In these circumstances the order of the tribunal by which it held that these workmen were the workmen of the company was beyond its jurisdiction. The entire order of the tribunal is directed against the company and must therefore be set aside in whole as without jurisdiction and we need not express any opinion on the merits. We therefore allow the appeal and set aside the order of the tribunal against the appellant. In the circumstances we pass no order as to costs.

Appeal allowed.