V. Veerarajan & Ors vs Government Of Tamil Nadu & Ors on 14 January, 1987

Equivalent citations: 1987 AIR 695, 1987 SCR (1) 997

Author: Misra Rangnath

Bench: Misra Rangnath, M.M. Dutt

PETITIONER:
V. VEERARAJAN & ORS.

Vs.

RESPONDENT:
GOVERNMENT OF TAMIL NADU & ORS.

DATE OF JUDGMENT14/01/1987

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
DUTT, M.M. (J)

CITATION:
1987 AIR 695 1987 SCR (1) 997
1987 SCC (1) 479 JT 1987 (1) 141
1987 SCALE (1)42

ACT:
Industrial Disputes Act, 1947 --Ss. 10 & 12(5)--State Government-Reference of dispute for adjudication--Fit case where reference should be made--What is.

HEADNOTE:
A large number of workmen of the respondent-company were proceeded against by the management on certain charges. Later most of them were taken back to employment. On failure of conciliation in regard to 7 of the dismissed workmen, disputes were raised under s. 11-A of the Industrial Disputes Act, 1947. The Government declined to make a reference to the Labour Court for adjudication. A Single Judge as well as the Division Bench rejected the Writ Petition of the workmen.

On appeal, this Court on 9th July, 1985 set aside the judgments passed by the Single Judge and the Division Bench

and directed the State Government to reconsider the matter without taking into account the ground that the domestic inquiry had been conducted by the employer according to the principles of natural justice and the punishment imposed was not disproportionate to the gravity of the offence committed by the dismissed workmen and come to decision within 30 days whether it would make a reference of the industrial dispute to the Labour Court.

The Government again declined to make a reference stating: (1) that the company manufactures and supplies certain items to the Defence Department; (2) that there was industrial unrest followed by violence and stoppage of work in the establishment due to inter-union rivalry; (3) that the management charge-sheeted the workmen under specific provisions of the standing order; (4) that the workmen themselves had admitted the charges against them; (5) that in view of the proven charges and the need to preserve industrial peace in the establishment it was not a fit case for adjudication both on expediency and on merits.

When the appeal came up for further hearing, on behalf of the appellants-workmen it was contended that the grounds given in support
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of the order are totally irrelevant, immaterial and do not justify the refusal to refer the dispute.

On behalf of the respondents it was contended: (1) that the statute authorises the State to take a prima facie view of the matter for ascertaining whether it was a fit case wherein exercise of jurisdiction under Section 10(1) read with 12(5) was called for and a reference was warranted; (2) that the State Government in declining to make a reference has kept itself within the limit set by law; (3) that the grounds advanced in support of refusal to make a reference were clearly tenable and indicated that a broad and overall view of the matter was taken by the State Government; (4) that since the jurisdiction of this Court is not appellate and order of the State Government is administrative in character, no interference was warranted; and (5) that if the grounds advanced by the State Government were neither germane nor relevant, the matter should go back to the State Government for fresh disposal as it is not for this Court to direct a reference to be made.

Allowing the Appeal,

HELD: I. 1 It is open to the State Government to take the broad features into consideration while exercising jurisdiction under s. 10(1) of the Industrial Disputes Act, 1947. If the dispute in question raises a question of law the appropriate Government should not purport to reach a final conclusion on the said question of law because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions for that again would be the province of the Industrial

Tribunal. [1003H; 1004A-B]

1.2 S. 10 permits appropriate Government to determine whether dispute 'exists or is apprehended' and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication. [1004F-G]

1.3 There may be exceptional 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. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always he vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would he to render s. 10 and s. 12(5) of the Industrial Disputes Act nugatory. [1005A-C]

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Bombay Union of Journalists v. State of Bombay,' [1964] 6 SCR 22 = AIR 1964 S.C. 1617 M.P. Irrigation Karamchari Sangh v. State of M.P., [1985] 2 SCC 103 & Ram Awtar Sharma

JUDGMENT:

upon.

2. This is a fit case where a reference should be made. In the order of this Court on July 9, 1985 it had been clearly stated that a direction to make a reference would have been given but for the submission advanced on behalf of the counsel for the respondents that the matter should go back and the State Government should be given an opportunity of giving other valid reasons, if any, in support of its order. [1005G; 1006A] Nirmal Singh v. State of Punjab & Ors., [1984] Lab IC 1312 & Sankari Cement Alai Thozhilalar Munnetra Sangam & Anr. v. Management of India Cements Ltd., [1983] 1 L.L.J. 460, referred to.

3. The matter should go back to the State Government for fresh disposal and the State Government should make its order of reference within one month and the Labour Court to which the dispute may be referred shall dispose of the reference within four months from the date of the receipt of the reference. [1006C-D] & CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3 144 of 1985.

From the Judgment and Order dated 20.11. 1984 of the Madras High Court in Writ Appeal No. 178 of 1982 M.K. Ramamurthy, Ambrish Kumar and Rajaraman for the Appellants.

K. Parasaran, Attorney General, G.L. Sanghi, Dr. Y.S. Chitale, A.V. Rangam, T.V. Ratnam and A.T.M. Samanth for the Respondents.

The Judgment of the Court was delivered by RANGANATH MISRA, J-154 workmen were proceeded against by the management of Lucas-T.V.S. Limited, Madras, for wilful disobedience of lawful orders of superiors, acts subversive of good and proper behaviour within the estab- lishment after authorised hours of work without permission and shouting of slogans within the establishment amounting to misconduct under Standing Orders. Later 134of them were taken back to employment. In regard to 7 of the dismissed workmen conciliation was undertaken and upon its

failure, disputes raised under section 11-A of the Industrial Disputes Act were asked to be referred to the Labour Court for adjudication. When Government declined to make a reference, the High Court was moved. The learned Single Judge rejected the writ petition and the Division Bench upheld such rejection. This appeal by special leave is against the order of the Division Bench of the High Court. This Court on July 9, 1985 after hearing counsel for parties came to the conclusion.

> "Now it is clear from the order made by the State Government on 11th October, 1979 which order has been reaffirmed by the State Govt. by its order dated 3rd May. 1981, that the only ground on which the State Government refused to make a reference, of the dispute to the labour court was that, in its opinion the domestic inquiry had been conducted by the 3rd respondent (employer) according to the princi- ples of natural justice and the punishment imposed by the 3rd respondent on the appel- lants was not disproportionate to the gravity of the offence committed by them. This is also borne out from paragraph 6 of the counter-
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> affidavit filed on behalf of the 1st respond- ent ..... where it has been clearly stated that the Labour Department of the Government of Tamil Nadu opined that the management had conducted a fair and proper inquiry and also taken in consideration the gravity of the offence before dismissing the appellants and the punishment imposed on the appellants was not disproportionate having regard to the nature of the charges proved against them. This ground on which the State Government has acted in refusing to refer the dispute to the labour court is clearly an irrelevant ground. It is now settled law as a result of the decisions of this Court in Workmen of Syndi cate Bank, Madras v. Government of India & Anr., [1985] 1 L.L.J. 93 and Ramawatar Sharma and Ors., v. State of Haryana & Anr., [1985] 1 Scale 713 that the appropriate Government cannot decline to make reference of an industrial dispute arising out of the termination of the service of a workman on the ground that the domestic inquiry resulting in the termination of the services of the workman was in the opin- ion of the State Government in conformity with the principles of natural justice and that the punishment im- posed on the workman was not disproportionate to the offence with which he was charged ..... "
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> "We would therefore have ordinarily allowed the appeal and set aside the judgments of the learned Single Judge and the Division Bench of the High Court and directed the State Government to make a reference of the industrial dispute between the appellants and the 3rd respondent. But Dr. Chitale appearing on behalf of the 3rd respondent urged that there might be some other relevant grounds which may still be required to be considered by the State Government before deciding whether to make a reference or not and the case should therefore go back to the State Government to reconsider the question in the. same manner in which this Court directed the State Government to reconsider in the Workmen of Syndicate Bank case (supra). But this is a case in which more than 7 years have elapsed since the appellants were dismissed from service and they are still nowhere near a reference. We would therefore set aside the judgments passed by the learned Single Judge and the Division Bench and direct

> the State government to reconsider the matter without taking into account the aforesaid irrelevant ground and come to a decision within a period of 30 days from the date of receipt of the copy of this order whether it would make a reference of the industrial dispute to the Labour Court. We would keep the appeal pending before us and as soon as the decision is reached by the State Government, which of course should be within a period of 30 days from the date of receipt of the copy of this order by the State Government, intimation of such decision shall be given to the Court so that the Court can then consider whether the decision reached by the State Government is legally justi- fied or not. We are informed that V. Kondiah the 2nd appel- lant has already settled the dispute with the 3rd respondent and therefore the question of making a reference of the dispute will have to be considered by the State Government only in regard to the remaining 6 appellants."

After the matter went back the State Government has made the following order:

> "Accordingly the Government have re-examined the conCilia- tion report first read above and all other connected rele- vant records and consider that it is not necessary to refer the cases of Thiruvalargal K. Arinathan, A.C. Kabaleswaran, V. Srinivasan, V. Veerarajan, P. Subramanian and H. Indira- rajan for adjudication both on merits and on expediency for the following reasons:
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> (1) Lucas-T.V.S. Limited are suppliers of some items to the Defence.
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> (2) There was industrial unrest followed by vio-

lence and stoppage of work in this establishment in 1977 due to inter union rivalry.

Again there was industrial unrest due to inter union rivalry in this establishment in 1978 employing 2400 workmen. To avoid recurrence of such incidence and stoppage of work again in 1978 the Management took disciplinary action against 154 workmen. The Management took back 134 workmen out of 154. The seven workmen are among those who were dismissed considering the gravity of the offence. (3) The Management charge-sheeted these seven workmen under the specific provisions of the standing orders for misconduct such as wilful disobedience of lawful orders of the superiors, acts of subversive of good and proper behaviour within the establishment, being within the estab- lishment after authorised hours of work without permission shouting slogans within the establishment etc.- (4) All the workmen admitted the charges framed against them during the enquiries and hence the Managment dismissed them from service based on these enquiries and taking into account their past services. (5) Since the workmen themselves have admitted the charges against them. The Government consider that the charges have been proved.

(6) The Government also considered the nature of proven charges and the quantum of punishment imposed on them with a view to decide the question whether the reference should be made or not.

(7) Considering the proven charges and the need to preserve industrial peace in the establishment the Govern- ment consider that this is not a fit case for adjudication both on expediency and on merits.

No action is considered necessary in respect of the case of Thiru A. Kondaiah who has settled his accounts finally with Management."

With reference to the order made by the State Government the appeal has been further heard. Mr. Ramamurthi for the appellants, learned Attorney General for the Government of Tamil Nadu and Dr. Chitale for the Management have advanced their respective contentions.

The seven grounds given in support of the order refusing to make a reference have been challenged by Mr. Ramamurthi as irrelevant. The facts that the Company manufactures and supplies certain items to the Defence Department of the Union of India and there was industrial unrest followed by violence and stoppage of work, according to learned counsel, are not germane and relevant for the purpose of deciding as to whether the dispute raised by the six workmen should be referred to industrial adjudication. So far as the third ground is concerned, according to Mr. Ramamurthi, it is in effect repetition of the earlier grounds which this Court found to be irrelevant. The language has been changed and the grounds have been made descriptive and detailed. Coming to the 4th ground it is contended that all the 154 delin- quent workmen had accepted their guilt when negotiation for a settlement was undertaken. There was no justification for the employer to discriminate between 134 workmen who were restored to service and the remaining 20 including the six appellants to whom re-employment was not given. Mr. Rama- murthi states that ground No. 5 is totally irrelevant. Similarly, grounds nos. 6 and 7 are not at all material and do not justify the refusal to refer the dispute. In support of the appeal the learned counsel has further contended that in a series of decisions beginning with the case of Bombay Union of Journalists v. State of Bombay, [1964] 6 SCR 22=AIR 1964 SC 1617 this Court has clearly laid down that it is open to the State Government to take the broad features into consideration while exercising jurisdiction under section 10(1) of the Act. If the dispute in question raises a ques- tion of law the appropriate Government should not purport to reach a final conclusion on the said question of law because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclu- sions for that again would be the province of the Industrial Tribunal. Gajendragadkar, J. as he then was speaking in that case indicated:

> " .... it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under section 10(1) read with the sec- tion 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Govern- ment is

entitled to make in dealing with a dispute under section 10(1) .....

Mr. Ramamurthi also placed reliance on the decision in the case of M.P. Irrigation Karamchari Sangh v. State of M.P., [1985] 2 SCC 103 where it has been said:

"There, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute 'exists or is apprehended' and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication. When a refer- ence is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudica- tion and thereby usurpation of the power of a quasi-judicial Tribunal by an administrative authority namely the appropri- ate Government ..... What the State Government has done in this case is not a prima facie examination of the merits of the question involved."

"There may be exceptional 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. Government should be very slow to attempt an examination of the demand with a view to decline reference and courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Sec- tion 12(5) of the Industrial Disputes Act nugatory."

In the case of Ram Awtar Sharma & Ors. v. State of Haryana & Anr., [1985] 3 SCC 189 the ratio in the Bombay Union of Journalists' case has been reiterated. Learned Attorney General for the State of Tamil Nadu submitted that the statute authorises the State to take a prima facie view of the matter for the purpose of ascertain- ing whether it was a fit case wherein exercise of jurisdic- tion under section 10(1) read with section 12(5) of the Act was called for and a reference was warranted. The State Government in declining to make a reference in the present case has kept itself within the limit set by law as deline- ated by this Court.

Dr. Chitale contended that the grounds advanced in support or refusal to make a reference were clearly tenable and indicated that a broad and overall view of the matter was taken by the State Government. Since the jurisdiction of this Court is not appellate and the order of the State Government is administrative in character, no interference was warranted. Dr. Chitale further added that if we took view that the grounds advanced by the State Government were neither germane nor relevant, the matter should go back to the State Government for afresh disposal as it is not for this Court to direct a reference to be made. Having heard learned counsel for the parties we are of the view that this is a fit case where a reference should be made. In the order of this Court in the present case on July 9, 1985 it has been clearly stated that a direction to make a reference would have been given but for the submission advanced by Dr. Chitale that the matter should go back and the State Government should be given an opportunity of giving other valid reasons, if any, in

support of its order. In the case of Nirmal Singh v. State of Punjab & Ors., [1984] Lab IC 13 12 this Court gave a direction that reference be made forthwith. Similarly, in the case of Sankari Cement Alai Thozhilalar Munnetra Sangam & Anr. v. Management of India Cements Ltd., [1983] 1 L.L.J. 460 this court gave a direc- tion for making of a reference.

The criticism advanced by Mr. Ramamurthi in regard to the reasons given by the State Government seem to be well- founded and we are of the opinion that the respondent-State Government should have a direction to refer the dispute for adjudication by the labour court. The State Government's order should be made within one month from to-day and the Labour Court to which the dispute may be referred shall have a direction to dispose of the reference within four months hence from the date of receipt of the reference. The appel- lants shall be entitled to costs. Hearing fee is assessed at Rs. 3,000 and is recoverable from Respondent No. 1.

A.P.J. Appeal al- lowed.