

Supreme Court of India

Village Papers Mazdoor Sangh, ... vs State Of H.P. And Ors. on 3 May, 1994

Equivalent citations: (1995) IILLJ 628 SC, 1995 Supp (1) SCC 291

Author: K Singh

Bench: K Singh, P Sawant

ORDER Kuldip Singh, J.

1. Village Papers Private Limited (the Company) Respondent No. 4 in the appeal herein, questioned the legality of the reference dated February 2, 1987 made by the State of Himachal Pradesh under Section 12(5) of the Industrial Disputes Act, 1947 (the Act). The said reference was as under:

Whether the termination of 30 workers (list attached by the Management of M/s. V.P.L. Mehatpur, District Una, (H.P.) is justified and in order. If not, to what relief and order? If not, to what relief and amount of compensation these workers are entitled?

The precise argument raised before the High Court was that no demand was raised by the workmen upon the employer, either orally or in writing, and as such no dispute within the meaning of Section 2(k) of the Act existed and as such no reference under the Act could be made by the State Government.

2. A Three-Judge Bench of the High Court by majority accepted the contention of the company and came to the conclusion that there was no dispute between the workmen and the company. As a consequence by a majority judgment the High Court quashed the reference dated February 2, 1987. This appeal by way of special ; leave is against the judgment of the High Court.

3. We have heard learned Counsel for the parties. We are of the view that in the facts of the present case it is not possible to hold that no dispute existed between the workmen and the company. We may briefly state the undisputed facts of the case. On December 20, 1985 a demand notice was served by the workmen's union upon the company which related to certain demands of the workmen in relation to their conditions of service. While conciliation proceedings were pending in respect of the said demands the company on June 20, 1986 suspended six of its workmen. It is further stated by the company that the 32 workmen absented themselves from duty with effect from June 30, 1986. On July 2, 1986 the company served a notice upon the absenting workmen calling upon them to show cause why their services be not terminated. The workmen submitted their reply on July 12, 1986. After taking into consideration the reply submitted by the workmen the company served another notice dated July 21, 1986 upon the 32 workmen wherein it was pointed out that they were absenting without any cause and their absence would be treated as abandonment. The workmen were called upon to join their duty by July 26, 1986 failing which the company would be compelled to terminate their services. Meanwhile on July 23, 1986 the Conciliation Officer submitted a failure report in respect of the demands which were the subject-matter of the conciliation proceedings. On July 31, 1986 notices were served on the absenting employees informing them that they would be no longer employees of the company with effect from August 1, 1986. It was, however, stated in the notice that being old employees of the company they would be given preference in case they wish to join the duties within two weeks i.e. by August 14, 1986. On August 26, 1986 Labour

Commissioner sent a telegram to the Government informing that dharna was continuing in the company. Meanwhile Labour Officer sent a notice to the company as well as to the workers' union informing that September 2, 1986 (3 p.m) was fixed for further conciliation. The meeting was attended by the representatives of the company but none appeared on behalf of the workers. No proceedings took place. On October 27, 1986 another notice was sent to the company and the workers' union informing that further conciliation proceedings would take place on November 6, 1986. On that date none appeared on behalf of the Company. The Workers' Union however, raised the demand regarding reinstatement of the 32 workmen. The Conciliation Officer conducted proceedings on November 6, 1986 in the absence of the company, prepared its report and sent the same to the Labour Commissioner with a copy to the State Government. The Conciliation Officer had reported the failure of the conciliation proceedings. The Labour Commissioner endorsed the recommendation of Conciliation Officer and suggested to the State Government that a reference under the Act be made for adjudicating the dispute by the Court. As a consequence the reference quoted above was made by the State Government on February 2, 1986.

4. We may have a look at the relevant provisions of Sections 2(k), 10(1) and 12(5) of the Act which are as under:

2. (k) 'industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

10. Reference of disputes to Boards, Courts or Tribunals- (1) (Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time), by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a tribunal for adjudication.

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c);

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this

sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

12. (5) If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefore.

The sine qua non for making a reference under Section 12(5) of the Act is the existence of failure report from the Conciliation Officer. It is not disputed that there were prolonged proceedings before the Conciliation Officer which ultimately ended in failure. The Conciliation Officer submitted his report which was endorsed by the Labour Commissioner. The condition - precedent under Section 12(5) of the Act was fully satisfied. The State Government was thus justified in making the reference under Section 12(5) of the Act.

5. Even otherwise we are satisfied that in the facts of this case as quoted above a demand was raised by the workmen and there was a dispute in-existence between the parties in terms of Section 2(k) of the Act. Even an apprehension of a dispute is a sufficient ground for making a reference. We are satisfied that the State Government was justified in forming an opinion that dispute existed between the company and the workmen. The reference under Section 10(1) of the Act was, therefore, justified. In the view we have taken, it is not necessary for us to go into the question of law adjudicated by the High Court. We leave the question open to be decided in an appropriate case.

6. We allow the appeal, set aside the judgment of the High Court and hold that the reference dated February 2, 1987 was in accordance with law and justified. The Labour Court shall forthwith proceed with the reference and decide the same as expeditiously as possible preferably within six months from the receipt of this order. Needless to say that it would be open to the company to raise the plea of abandonment before the Labour Court. No costs.