W. P. (L) No. 1086 of 2015

In the matter of an application under Article 226 of the Constitution of India

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Their Workmen Union represented through its Krishnadeo Prasad Yadav, S/o Late Birbal Prasad Yadav, President of Rastritya Colliery Mazdoor Congress BCCL Zone, Resident of Bhuli Nagar, Block – B, Q. No. B/170, PO Bhuli, PS Bank More, District Dhanbad, Jharkhand

… … Petitioner

Versus

1.The Union of India through its Secretary, Govt. of India, Ministry of Labour & Employment, Shram Shakti Bhawan, PO & PS Shastri Nagar, Rafi Marg, New Delhi
2.The General Manager, Western Washery Zone of M/s. BCCL, PO & PS Mahuda, Dist. Dhanbad, Jharkhand

… … Respondents

For the Petitioner : Mr. Sarvendra Kumar, Advocate
For the Respondent-Union of India : Mr. Pratyush Kumar, C.G.C.
For the Respondent-BCCL : Mr. Anoop Kumar Mehta, Advocate

Present:
HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

21.02.2019 Heard Mr. Sarvendra Kumar, learned counsel appearing for the petitioner, Mr. Anoop Kumar Mehta, learned counsel for the BCCL and Mr. Pratyush Kumar, learned Central Government Counsel for the Union of India.

2. In this writ application, the petitioner has prayed for issuance of writ in the nature of Certiorari for quashing the order dated 01.12.2014 passed by the Section Officer vide letter no. L-20012/114/2014-IR (CM-1), Government of India, Ministry of Labour, New Delhi whereby and wherein the appropriate government had refused to refer the dispute for adjudication. A further prayer has been made for a direction upon the concerned respondents to regularize the services of Shri Bijali Bhuia and 272 others in BCCL.

3. It is the case of writ petitioner as stated in the writ application that Bijali Bhuia and 272 others were engaged against a perennial nature of

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job in Dugda Coal Washery under BCCL through Dugda Medling Workers Committee, Dugda land losers and local general labour association since the last 17 years under the direct control and supervision of Dugda Coal Washery Management of M/s. BCCL, Dhanbad. Since on the demand of the workmen concerned through their Union for their regularization, the management stopped taking work from them and ultimately an industrial dispute was raised before the Assistant Labour Commissioner, Central in which a conciliation proceeding was initiated on 17.09.2013 which ultimately ended in a failure and a failure report was submitted to the appropriate government who vide order dated 01.12.2014 refused to refer the dispute for adjudication by a competent Labour Court/Tribunal on the ground that the workmen concerned never worked under the direct control of the management of BCCL and the Union had failed to provide documentary evidence to substantiate their claim that the workers in question had completed 240 days of regular work in any one calendar year during the last 15 years and their details.

4. During the conciliation proceedings the management came out with its stand that none of the workmen were employed in the establishment of Dugda Coal Washery. It has also been stated that the RCMC Union does not exist in Dugda Coal Washery and none of the workers employed in Dugda Coal Washery is a member of the said Union. The management has also given the list of the unions which are functional in the Dugda Coal Washery and had contended that the Union which is espousing the cause of the workmen was never functioning in Dugda Coal Washery. A further stand has been taken that there is no record with respect to Shri Bijali Bhiyan and 272 others of being engaged by Dugda Coal Washery Management and there is no document relating to their employment in Form B Register, Attendance Register which proves that they were never employed by the management.

5. It has been stated by Mr. Sarvendra Kumar, learned counsel for the petitioner that the appropriate government has merely to refer the dispute for adjudication and it cannot entertain and decide the dispute on merits. Learned counsel submits that referring a dispute for adjudication before a competent Labour Court/Tribunal is basically an

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administrative order and the appropriate government cannot consider the merits of the case and has to restrict itself only by referring the dispute for adjudication. Learned counsel in support of his contention has referred to the case of ***"Telco Convoy Drivers Mazdoor Sangh and another Vs. State of Bihar and others"*** reported in *AIR 1989 SC 1565* and ***"Ram Ratan Ram Vs. Union of India & Anr."*** reported in *2010 (3) AIR (Jhr.) 358*.

6. Mr. Pratyush Kumar, learned C.G.C. has submitted that the union has failed to bring any document on record which would suggest that Shri Bijali Bhuia and 272 others were in employment at Dugda Coal Washery. It has been stated that the workmen concerned were never permanent employees nor there is anything to suggest that they were the employees of the contractor. It has been stated that the appropriate government has to indicate a prima-facie satisfaction about the dispute whether or not the dispute is referred for adjudication. Learned counsel in support of his contention has referred to the case of ***"Secretary, Indian Tea Association Vs. Ajit Kumar Barat & others"*** reported in *(2000) 3 SCC 93*.

7. Mr. Anoop Kumar Mehta, learned counsel appearing on behalf of the respondent no. 2 has initially referred to the case set-up by the Union that they were employed in the perennial nature of job in Dugda Coal Washery. Learned counsel has reiterated what has been stated by the Central Government Counsel while indicating that there has been no documentary proof whatsoever produced by the Union in order to support such contention. Learned counsel has also referred to the stand taken by the Management before the Conciliation Officer in which a categorical denial has been made that the Shri Bijali Bhuia and 272 others were employed in Dugda Coal Washery in a perennial nature of job. It has been further stated that the Union has merely given out the names of the concerned workmen, but in absence of there being details showing that they were indeed working in Dugda Coal Washery, such application comprising of the names of the concerned workmen won't suffice in considering the fact as to whether the dispute could be referred for adjudication or not. Mr. Mehta, learned counsel for the respondent no. 2 has drawn the attention of the Court to Section 10 of the Industrial

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Disputes Act by stating that prior to making a reference, an opinion has to be formed and reasons have also to be given. It has been stated that since no document could be produced by the Union and in absence of there being any employer – employee relationship between the concerned workmen and the management of M/s. BCCL, the appropriate government therefore had come to a conclusion refusing to refer the dispute for adjudication. Mr. Mehta has relied on the judgment in the case of ***"Secretary, Indian Tea Association Vs. Ajit Kumar Barat & others"*** reported in *(2000) 3 SCC 93* and ***"Rahman Industries Pvt. Ltd. Vs. State of Uttar Pradesh & Others"*** reported in *(2016) 12 SCC 420* to substantiate his contention that the Central Government has rightly refused to refer the dispute for adjudication.

8. Mr. Sarvendra Kumar, learned counsel for the petitioner has stated in response that the rejoinder to the writ application contains various details including gate passes to show that the concerned workmen were regularly doing work of a perennial nature in Dugda Coal Washery, but such document have never been considered by the appropriate government and it was a misnomer in the impugned order dated 01.12.2014 to have indicated that the Union had never produced documents in support of its claim.

9. On consideration of the arguments advanced by the respective parties, the primary and perhaps the only issue which has to be decided is as to whether the appropriate government was within its jurisdiction to evince a prima-facie satisfaction to ensure as to whether a dispute exist or not or is merely required to refer the dispute for adjudication without considering the materials placed before it or for that matter in absence of any material in support of the rival contentions.

Section 10(1) of the Industrial Dispute Act gives power to the appropriate government to refer any industrial dispute which exists or is apprehended subject to the condition that it has to form an opinion. In the case of ***"Telco Convoy Drivers Mazdoor Sangh & Anr."*** (supra) while considering the said issue, it was held that the appropriate government was not justified in adjudicating the dispute as to whether the Convoy Drivers were the workmen or employees of Telco or not and on such consideration, a direction was given to the government to make a

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reference for adjudication. The relevant part of the order as aforesaid reads as follows:

> *14. "Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in, the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptionl 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. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference*
>
> *and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.*
>
> *15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained.*
>
> *16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference, under Section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See Sankari Cement Alai Thozhiladar Munnetra Sangam v. Govt. of Tamilnadu, (1983) 1 Lab LJ 460; Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 : (AIR 1985 SC 915); M. P. Irrigation Karamchari Sangh v. State of M. P., (1985) 2 SCR 1019: (AIR 1985 SC 860); Nirmal Singh v. State of Punjab, (1984) 2 Lab LJ 396 : (AIR 1984 SC 1619).*

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> *17. In the circumstances, we direct the State of Bihar to make a reference under Section 10(1) of the Act of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh by its letter dated October 16, 1986 addressed to the General Manager TELCO (Annexure R-4/1 to the Special Leave Petition), to an appropriate Industrial Tribunal within one month from today."*

10. The other judgment which has been cited by the learned counsel in the case of ***"Ram Ratan Ram"*** (supra) has followed the law laid down in the case of ***"Telco Convoy Drivers Mazdoor Sangh"*** (supra). In the case of ***"Secretary, Indian Tea Association"*** (supra), the legal points were concised on the question as to whether the government can look into the question about existence of an industrial dispute or not and it was summarized as follows:

> *7. "The law on the point may briefly be summarised as follows:*
>
> *1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.*
>
> *2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.*
>
> *3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.*
>
> *4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus.*
>
> *5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."*

11. In the case of "*Rahman Industries Pvt. Ltd.*" (supra), it was held as follows:

> *3. "We find force in the submission made by the learned counsel. In the scheme of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), it is not as if the Government has to act as a post office by referring each and every petition received by them. The Government is well within its jurisdiction to see whether there exists a dispute worth referring*

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for adjudication. No doubt, the Government is not entitled to enter a finding on the merits of the case and decline reference. The Government has to satisfy itself, after applying its mind to the relevant factors and satisfy itself to the existence of dispute before taking a decision to refer the same for adjudication. Only in case, on judicial scrutiny, the court finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors, the court may issue a direction to the Government to make a reference."

12. The judgment rendered in the case of ***"Telco Convoy Drivers Mazdoor Sangh"*** (supra) has been diluted by the subsequent pronouncements as noted above. Even at the cost of repetition, it must be stated that Section 10 does not indicate that once a failure report is submitted to the appropriate government, it can turn a blind eye and refer the dispute for adjudication. An opinion has to be formed in terms of Section 10(1) of the Industrial Disputes Act, 1947. The appropriate government cannot merely act as a post-office by simply referring the dispute for adjudication. By doing so, it will fail in its duty to abide by Section 10 of the Act to ensure whether an industrial disputes exists or not or which may be existing or apprehended as categorized in Section 2 (k) of the Industrial Disputes Act between employers and workmen or between workmen and workmen which is concerned with the employment or non-employment of any persons. An opinion has to be formed by the appropriate government based on whatever materials are placed before it. There cannot be a generalized concept while referring a dispute for adjudication by the appropriate government. What must be ensured is of formation of opinion and satisfying itself on the facts and circumstances of the case. The prima-facie satisfaction therefore, has to be based on evidence which raises a question as to the nature of evidence produced by the Union.

13. Mr. Pratyush Kumar, learned CGC on being queried by the court has produced the original file and from perusal of which it appears that the materials which had been placed by the Union before the Conciliation Officer did not bear any stamp and if compared with the documents produced by the petitioners in the rejoinder application, the same would show a stamp and the genuineness or otherwise of the said documents comes within the realm of doubt. The Central Government had refused to refer the dispute for adjudication primarily

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on two grounds. Firstly there was no employer – employee relationship between the Management of Dugda Coal Washery and Shri Bijali Bhuia and 272 others and secondly the Union had failed to produce documentary evidence to substantiate their claim that the workers in question had completed 240 days of regular work in any one calendar year during the last 15 years and their details. The impugned order dated 01.12.2014 cannot be called into question in absence of any documentary proof being provided by the Union save and except some purported gate passes which as has been indicated above creates an obvious doubt when compared to the documents brought on record through the supplementary affidavit by the petitioner. Therefore, the appropriate government was within its rights to form an opinion and on account of paucity of evidence on the part of the Union, such opinion was formed while refusing to refer the dispute for adjudication.

14. In view of what has been stated above, therefore, I do not find any reason to entertain this writ application which accordingly stands dismissed.

15. Office is directed to return the original file to Mr. Pratyush Kumar, learned CGC.

(Rongon Mukhopadhyay, J)

Jharkhand High Court at Ranchi
The 21st day of February, 2019
R. Shekhar/NAFR/Cp. 2

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