

ALLAHABAD HIGH COURT

Champion Cycle Industries

Vs.

State of U.P

(M.C. Desai, C.J. and R.S. Pathak, J.)

Special Appeal No. 634 of 1963 against order of S.N. Dwivedi J. in Civil Misc. Writ
Petn. No. 3662 of 1953

21.10.1963. 24.10.1963

JUDGMENT

Desai, C.J.

1. This is an appeal from a judgment of our brother Dwivedi refusing to issue a writ of prohibition restraining the Presiding Officer of a Labour Court from adjudicating an industrial dispute referred to the Court by the State Government under Section 4K of the U.P. Industrial Disputes Act. A dispute arose between the appellant, the employer, and its workmen relating to 31 workmen. The State Government referred the dispute relating to "only three of the workmen to the Labor Court and refused to refer the dispute relating to the remaining 28 workmen on the ground that it did not consider it fit to refer it. The dispute relating to three workmen that was referred to the Labor Court ended in a compromise before the Labor Court and thereafter the State Government referred the dispute relating to 21 out of the remaining 28 workmen to the Labor Court. The appellant's contention is that the State Government had no power left to refer the dispute to the Labor Court after having previously refused to refer it. Our learned brother refused to issue prohibition on the ground that the appellant could raise this question before the Labor Court itself.

2. The question was of the jurisdiction, not of the Labor Court but of the State Government, to refer the-dispute to it. The jurisdiction of the Labor Court over the dispute is not contested at all. If the State Government had no power to refer the dispute and shift referred it, the Labor Court should have refused to assume jurisdiction over it. So, it was for it to decide whether the State Government had the power to refer it, i.e. the State Government's power was a matter to be raised before it,

and our learned brother was right in saying that the appellant should question the State Government power to refer the dispute before the Labor Court itself. When this remedy was open' to it, it was not entitled to ask for a writ of prohibition from this Court. It might be a different matter if the Labor Court's jurisdiction itself were questioned; it might be argued in that case that its assumption of jurisdiction amounted to its decision that it had jurisdiction and so a petition for prohibition lay. Here the Labor Court had to be informed of certain facts and invited to decide whether they did not deprive in State Government of the power of reference.

3. Under Section 4K "where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time refer the dispute to a Labor Court". When an industrial dispute exists the State Government has absolute discretion in the matter whether to refer it to a Labor Court or not; in order to enable it to refer it to a Labor Court nothing more than the mere existence of an industrial dispute is required. It is not required to decide anything (except whether an industrial dispute exists or not.) When, therefore, an industrial dispute exists and it does not refer it at once it is not debarred from referring it at a later stage. The words "at any time" in Section 4K make it clear that it is open to the State Government to refer an industrial dispute long after it has come to exist (provided it continues to exist). If it can refer an industrial dispute today even though it did not refer it yesterday it can refer it today even though it deliberately refused to refer it yesterday; its saying yesterday that it would not refer it does not bar its referring it today. Its refusal yesterday to refer it does not amount to its deciding anything which may operate as *res judicata* or as *estoppel*. No reasons are required for referring an industrial dispute and, therefore, a refusal on any ground does not bar reference on a subsequent date. The State Government, therefore, could refer the industrial dispute to the Labor Court in spite of its having refused to do so on a previous day.

4. We dismiss the special appeal summarily.

Appeal dismissed.