CALCUTTA HIGH COURT

Royal Calcutta Golf Club Mazudur

Vs.

State of West Bengal

Matter No. 151 of 1955

(Sinha, J.)

13.07.1956

ORDER

Sinha, J.

1. The facts in this case are shortly as follows; The petitioner before me is the Royal Calcutta Golf Club Mazdur Union, being a Trade-Union of the workers employed in the Royal Calcutta Golf Club, which is an institution incorporated under the Indian Companies Act with liability limited by guarantee without thy addition of the word 'limited'. This institution is primarily an association of persons, who desire to play golf in Calcutta, and renders all facilities for that purpose. It is not denied that it makes available food and drink for consumption of its members, as also that it maintains a shop where members can buy their golfing equipment. Lessons are also given for which fees are charged. Between 17-11-1954 and 5/6-12-1954 the petitioner submitted a Charter of Demand of the workmen of the said club, to the Secretary of the club. The Charter of Demand inter alia contained demands for recognition of the Union, for fixing scales and classification of pay, house allowance, working hours, bonus etc. It also demanded reinstatement of some workmen who had been discharged. As the Charter of Demand was not complied with, it was referred to Government, and the Assistant Labour Commissioner, Government of West Bengal, called a joint conference of the club and its workmen on 17-12-1954. At the said joint conference the main subject for discussion was the dismissal of one Ramavatar, and suspension of Mangru Sardar, and a demand was made that Ramavatar should be forthwith reinstated and the proceedings against Mangru Sardar should be withdrawn. Until this was done the Union was not prepared to discuss the other disputes. As a matter of fact, it insisted that there should be a reference to adjudication straightaway with regard to the disputes regarding these two workmen. The Conciliation Officer explained that the disputes could not be considered in this piece-meal fashion, and he fixed another joint conference to be held on 28-12-1954. According to the affidavit filed by the Conciliation Officer, nobody turned up on behalf of the petitioner on 28-12-1954. On behalf of the petitioner it is stated that no intimation was given to the petitioner about the proposed joint conference on the 28th, but as a matter of fact it was on that date that a notice was given for a conference to be held on 11-1-1955. It is very difficult to determine as to the truth or otherwise of this grievance. I find however that on 24-12-1954 a letter was written by the President of the Union to the Labour Commissioner, Government of West Bengal, a copy

whereof is annexed to the affidavit of Fatik Ghose affirmed on 30-1-1956 and marked with the letter 'A'. In this letter, it is definitely stated that in view of the attitude of the Club Authorities no fruitful result would conic out of the conciliation and that the conciliation proceedings had failed. It proceeds to state as follows :-

> "The Union considers it fruitless to continue participation in the conciliation talk. In these circumstances, may hope that you would kindly close conciliation talk and ask the Government for referring the dispute to an Industrial Tribunal at an early date."

2. Even after this, the Conciliation Officer held further joint conference, and it is not denied that the petitioner participated in it. Thus, there were joint conferences on 11-1-1955 and on 20-1-1955, On the last date, as there could not be a settlement arrived at, in the case of Mangru Sardar, the representatives of the Union left the Conference and refused to participate in it. A Conference was again fixed on 9-3-1955 which was postponed to 24-3-1955. It does not appear, however, from the affidavits as to what happened at that conference. The Conciliation Officer thereafter asked the club to submit its written comments on the Charter of Demand and the club did so on or about 7-3-1955. The Conciliation Officer carefully considered all the facts and made a report, as he is required to do under Section 12 of the Industrial Disputes Act. By letter dated 16-5-1955 Mr. N.C. Moitra, Assistant Secretary to the Government of West Bengal, Labour Department, wrote to the Secretary of the Union informing him that the Government had decided not to intervene in the matter, and the reasons were given. It was stated that according to Government, the conditions of service were not considered unreasonable, and that the dismissals of certain workmen including Mangru Sardar were considered justified. This rule was issued on 2-9-1955 and in effect seeks for a writ in the nature of mandamus directing the respondents not to act upon the decision of Government mentioned above, and directing them to act in accordance with law, that is to say, to refer the disputes for adjudication. Mr. Guho appearing on behalf of the petitioner argues as follows : He says that upon the facts as stated above, there certainly existed a dispute, that is to say, an industrial dispute. He argues that at least the disputes with regard to Ramavatar and Mangru Sardar were considered by the Conciliation Officer himself to be a dispute in regard to which conciliation proceedings had failed. Mr. Guho attacks the proceedings in two ways. Firstly, he says that there being a dispute, there should have been a reference to adjudication; secondly, he says that the Conciliation Officer had duties which were judicial in nature, inasmuch as he had the duty to investigate the dispute. He says that he had failed to act in accordance with the law, because he had violated the rules of natural justice in not giving to the petitioner sufficient opportunity of putting Forward its case and of meeting the case made by the club. Consequently he argues that this Officer should be made to do his duty and that the Government which has made an order based on his report has acted illegally, and it should be directed to refer the disputes for adjudication.

3. The relevant Sections of the Industrial Disputes Act (hereinafter referred to as the "Act') are Sections 10 and 12. Under Section 10, where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a Board for promoting a settlement or refer any matter appearing to be connected with or relevant to the dispute, to a Court of Enquiry or refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Tribunal for adjudication. It will be observed that the duty cast on Government is qualified in two ways. Firstly, it has to arrive at an opinion that an

industrial dispute exists or is apprehended, and secondly, it has been given a discretion to make an order of reference. In contrast with such discretionary power, there are other provisions in Section 10 which are stricter e.g. where the disputes relate 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 and vexatiously given or that it would be inexpedient so to do, make a reference notwithstanding that any other proceeding under the Act in respect of the dispute may have commenced. It will here be seen that the Government has power to go into the question as to whether the notice given under Section 22 has been frivolously or vexatiousiy given and further to consider whether it would be inexpedient to make a reference or not. If Government comes to a conclusion which is favourable to the workman, then, of course, it must refer the matter. Where, however, both parties to the industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference to either a Board, Court or a Tribunal, and the appropriate Government is satisfied that the persona applying represent the majority of each party, then it shall make the reference accordingly. Here the only duty cast on Government is to be satisfied that the persons applying represent the majority of each party. If Government is so satisfied, then it is bound to refer the matter. Coming to Section 12 of the Act, I find that it deals with the cases where there is or might be, a conciliation by a Conciliation Officer, it provides that where an industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in a prescribed manner. Sub-Sections 2, 4 and 5 are important and must be set out :

> "Section 12 (2) The conciliation officer shall, For the purpose of bringing about a settlement of the dispute without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit For the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
> (4). If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
> (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 or 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 therefor."

4. It will be observed that where a report has been submitted by the Conciliation Officer, it is For the appropriate Government to be satisfied that there was a case for reference to a Board or Tribunal. If it does not make such a reference, it shall record and communicate to the parties concerned, its reasons therefor. The question has naturally arisen as to the extent of Government's power to refer industrial disputes and to what extent the Courts can interfere. The first case that may be cited is the Supreme Court decision - '*The State of Madras v. C.P. Sarathy*[1]', The duties of Government to refer industrial disputes under Section 10 have been discussed in this case. Patanjali Shastri, C.J. said as follows : (p. 346) of 1953 FOR; (p. 57 of AIR 1953 SC) :

"But, it must be remembered that in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it bas to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its Inaction does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of 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 determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an. industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely For the Government to decide upon, and it will not be competent For the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on these matters."

5. It will thus be seen that the learned Chief Justice has emphasized the two qualifications which I have mentioned above. Whether we call it the power of the Government to refer or its duty to refer, as laid down in Section 10, there are two qualifications. Firstly, it has to arrive at a subjective opinion as to whether any industrial dispute exists or is apprehended. Secondly, even if it does conic to such a conclusion, or even if the facts are so patent that the-existence of a dispute cannot be denied, still, the expediency to refer to adjudication is left open to Government. In other words, because a dispute exists it does not follow that it must be referred. As framed, the Section does not even speak of the existence of an industrial dispute, but as to the opinion of Government as to whether it exist : or is apprehended. Government cannot make a dispute, which is not an industrial dispute into an industrial dispute, because that is an objective fact. But it is the sole arbiter in deciding whether an industrial dispute exists or is apprehended. That is purely subjective. In some cases, a grievance is made that the facts are so patent that any reasonable person is bound to come to the conclusion that a dispute exists, and if it exists, then not to refer it, is mala fide or dishonest. I do not think that this argument is of any substance. As I have mentioned above, it is not the existence of an industrial dispute which is the last word on the subject. The Government is also the authority to determine as to the expediency of referring an existing industrial dispute. That has been made clear in the decision of the learned Chief Justice, in the decision quoted above. It will be observed that the wordings of Sub-Section (5) of Section 12 are slightly different from the opening words of Section 10. Mr. Ginwalla has argued, not without reason, that the real power of reference is given by Section 10 and Section 12(5) merely lays down as to what happens when. a Conciliation Officer has invested and filed his report. It is not necessary however to express an opinion on the subject. Mr. Guho has argued that it is Section 12

[1]1953 SCR 334 : AIR 1953 SC 53

which applies to the facts of this case and if Section 12(5) applies, then, I think, that the Government is in a still better position. What the Government has to be satisfied upon receiving a report, as laid1' down in Section 12(5), is as to whether there was a 'case for a reference' to a Board or Tribunal. These words ate very wide, and include the question as to the existence of a

dispute and as to the expediency of referring. The only difference is that in case Government chooses not to refer a matter for adjudication, it must record and communicate to 'the parties, the reason. It has communicated in this case its re-corded reasons. I next come to the argument put forward by Mr. Guho that the duties of a Conciliation Officer are judicial and that the investigations have been carried out in violation of the rules of natural justice. In my opinion, the duties of a Conciliation Officer are not judicial, but are administrative. It will be observed from the provisions of Section 12 that the Conciliation Officer has to do a variety of things. He has to investigate the disputes and do all such things as he thinks fit For the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes. If it was to be held that the duties of a Conciliation Officer were judicial, then in connection with everything that he does, the formalities of a judicial trial will have to be observed, e.g., he could not ascertain from one side its views except upon notice to, or in the presence of, the other parties. It is but patent that no Conciliation proceedings could be carried on under such conditions. The main task of the Conciliation Officer is to go from one camp to the other and find out the greatest common measure of agreement. That being so the grievance that the investigations have not been carried on in the manner that a judicial proceeding should be carried on, is without substance. So far as the violation of the rules of natural justice is concerned, that principle would not apply if the proceedings are purely administrative. Apart from this, I am by no means convinced on the facts of this case that the investigations have violated the rules of natural justice. From the facts stated above, it will appear that the Union., from the very first, took an obstructive attitude. Either the case of Ramavatar and Mangru was to be settled as a condition precedent or it was not prepared to proceed with the discussions. Mr. Guho has pointed out that subsequently the Union did attend meetings. But at all the meetings it maintained the same attitude, viz., that either the dispute as to Ramavatar and Mangru, or at least Mangru Sardar, must be settled or else there would be no conciliation. As a matter of fact, the letter dated 24-12-1954 would go to show that the Secretary of the Union definitely stated that it would be futile to proceed with the conciliation proceedings, which should be brought to an end. In the premises, I think, it is wholly unreal to say that the Union was perfectly willing at all times to proceed with the conciliation proceedings and to come to a just settlement, not to speak of the grievance that it had no opportunity whatsoever to partake in the discussions relating to an amicable settlement.

6. There are one or two authorities to which I might make a passing reference. The first case is - '*Ramchandra Abaji v. State of Bombay*[2]*',* In that case, Chagla, C.J. pointed out that Section 10 of the Act used the word 'may'. It is well settled that the mere use of the word 'may' was not conclusive of the question as to whether power was given coupled with a duty, or whether the expression 'may' indicated an absolute discretion vested in the authority.

> "But in this case", said the learned Chief Justice, "there can be no doubt as to what the Legislature intended by the use of the expression 'may',, because in the

[2] AIR 1952 Bom 293

> proviso, the Legislature has used the expression 'shall'. The Legislature wanted to draw a distinction between 'may' and 'shall'. Therefore,, in one case an absolute discretion was given to Government whether to refer or not to refer a dispute to one of the authorities mentioned in the Section in the other case no such discretion was given to the State."

The next case is - '*Sasemuse Workers' Union v. State of Bihar*[1]*',* The learned Judges held that

even assuming that there were materials to establish that there was an industrial dispute, the Government had to come to a subjective opinion in the matter and the discretion is given to Government to refer the industrial dispute or not, and that no writ in the nature of mandamus could be issued by the Court to the State Government directing them to refer an alleged industrial dispute to adjudication of an Industrial Tribunal. It is, therefore, clear that the order made in this case by Government is in accordance with law and that nothing has been done which calls for interference by this Court. Before concluding I might refer to only one other point, viz., as to whether the Golf Club carried on an 'industry' within the meaning of Industrial Disputes Act. This is a vexed question, but regard being had to the decisions of this Court already made and to my own decision in - '*Bengal Club v. Santi Banjan Samaddar*[2]*',* I must hold that it does carry on an industry within the meaning of the Industrial Disputes Act. As a matter of fact, this has not been very much disputed in this application.

7. For the reasons aforesaid, this application must fail and the rule must be discharged. All interim orders are vacated. There will be no order as to costs.

Rule discharged.

[1] AIR 1952 Pat 210

[2]60 Cal WN 856; (AIR 1956 Cal 545)