A TELCO CONVOY DRIVERS MAZDOOR SANGH & ANR.

v.

STATE OF BIHAR & ORS.

APRIL 28, 1989

B [MURARI MOHON DUTT AND T.K. THOMMEN, JJ.]

Industrial Disputes Act, 1947: Sections 10 and 12—Industrial Dispute—Appropriate Government—Power to make a reference—Nature of—Whether includes power to delve into merits of dispute—Formation of opinion by Government—Whether dispute 'Exists or is Apprehended'—Whether same thing as to adjudicate the dispute on its merits—Court—When can direct the Government to make a reference.

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The appellant-Telco Convoy Drivers Mazdoor Sangh, represented to the Tata Engineering & Locomotive Co. Ltd. (TELCO) demanding that all convoy drivers should be given permanent status and facilities that are available to the permanent employees of TELCO. The Deputy Labour Commissioner refused to make a reference under section 10(1) of the Industrial Disputes Act, 1947 because of the opinion of the Law Department that there was no relationship of master and servant between TELCO and the convoy drivers.

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The appellant-Sangh filed a writ petition in the High Court praying for a writ of mandamus commanding the State of Bihar to refer the dispute under section 10(1) of the Act. The High Court dismissed the petition but granted liberty to the appellant-Sangh to reagitate the matter before the appropriate Government.

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On a further representation also the Deputy Labour Commissioner refused to make a reference under section 10(1) of the Act. Again, the appellant-Sangh moved a writ petition in the High Court which summarily dismissed the petition holding that the appellants had failed to satisfy that they were employed by the TELCO. Hence this appeal by Special leave. After the conclusion of the hearing, the Court being of the view that the Government should be given one more chance to consider the question of making a reference, kept the appeal pending and directed the Government to reconsider the question of referring the dispute. Upon reconsideration also the Government refused to make a reference under section 10(1) of the Act. On the question: whether an appropriate Government exercising power to make a reference under section 10(1) of the Industrial Disputes Act, 1947 can delve into the

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merits of the dispute and adjudicate upon the dispute itself. A

Allowing the appeal and setting aside the judgment of the High Court,

HELD: 1. In considering the question of making a reference under section 10(1), the Government is entitled to form an opinion as to B whether an industrial dispute "exists or is apprehended". The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. [807A]

2. While exercising power under section 10(1) of the Act, the C function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. [807F] D

Ram Avtar Sharma v. *State of Haryana*, [1985] 3 S.C.R. 686; *M.P. Irrigation Karamchari Sangh* v. *The State of M.P.*, [1985] 2 S.C.R. 1019 and *Shambhu Nath Goyal* v. *Bank of Baroda, Jullundhur*, [1978] 2 S.C.R. 793 applied.

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2.1 In the instant case, the dispute is as to whether the convoy drivers are employees or workmen, of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers, the same cannot be decided by the Government in exercise of its administrative function under section 10(1) of the Act. Therefore, the State Government was not justified in adjudicating the F said dispute. [807B, 807H, 808A]

3. There may be exceptional cases in which the State Government may come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. But the Government should be very slow to attempt an examination of the demand with a view G to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of 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. [808A-C]

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A *M.P. Irrigation Karamchari Sangh* v. *The State of M.P.*, [1985] 2 **S.C.R. 1019 applied.**

4. In the instant case, in view of the fact that the Government has persistently declined to make a reference and even after reconsideration has adjudicated the dispute itself, the dispute should be adjudicated by
B **the Industrial Tribunal. [808E]**

The State of Bihar is directed to make a reference of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh to an appropriate Industrial Tribunal under section 10(1) of the Act. [808H, 809A]

C *Sankari Cement Alai Thozhilalar Munnetra Sangam* v. *Government of Tamilnadu*, [1983] 1 L.L.J. 460; *Ram Avtar Sharma* v. *State of Haryana*, [1985] 3 S.C.R. 686; *M.P. Irrigation Karamchari Sangh* v. *The State of M.P.*, [1985] 2 S.C.R. 1019 and *Nirmal Singh* v. *State of Punjab*, [1984] 2 L.L.J. 396; applied.

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2534 of 1989.

From the Judgment and Order dated 15.1.1988 of the High Court in C.W.J.C. No. 1852 of 1987.

E G.B. Pai, S.K. Sinha for the Appellants.

Shanti Bhushan, S. Sukumaran, D.N. Misra, S.B. Upadhyay and B.B. Singh for the Respondents.

The Judgment of the Court was delivered by

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DUTT, J. Special leave is granted. Heard learned Counsel for the parties.

The appellants, Telco Convoy Drivers Mazdoor Sangh, Jamshedpur, and another, have preferred this appeal against the judg-
G ment of the Patna High Court whereby the High Court dismissed the writ petition of the appellants challenging the order of the State of Bihar refusing to make a reference of the disputes raised by the appellants to the Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act".

H The appellant-Sangh represents about 900 convoy drivers. By a

letter of demand dated October 16, 1986 addressed to the General Manager of the Tata Engineering & Locomotive Co. Ltd., Jamshedpur (for short "TELCO"), the Sangh demanded that permanent status should be given by the management to all the convoy drivers, and that they should also be given all the facilities as are available to the permanent employees of TELCO on the dates of their appointment. The said demand proceeds on the basis that the convoy drivers are all workmen of TELCO. The dispute that has been raised in the said letter of demand is principally whether the convoy drivers are workmen and/or employees of TELCO or not. In other words, whether there is relationship of employer and employees between TELCO and the convoy drivers.

The Deputy Labour Commissioner by his letter dated February 26, 1979 informed the appellant-Sangh that in view of the opinion of the Law Department of the year 1973 to the effect that there was no relationship of master and servant between TELCO and the convoy drivers, the demands of the convoy drivers did not come within the purview of the Act and, accordingly, it was not possible to take any action in regard to the dispute of convoy drivers under the Act. The appellant-Sangh being aggrieved by the said refusal to make a reference under section 10(1) of the Act, moved before the Ranchi Bench of the Patna High Court a writ petition praying for a writ of mandamus commanding the State of Bihar to refer the dispute under section 10(1) of the Act. A learned Single Judge of the High Court, who heard the writ petition, took the view that the letter of the Deputy Labour Commissioner only referred to the Law Department's opinion of the year 1973 without indicating in what context and under what circumstances, he rejected the demand for a reference. In that view of the matter, the learned Judge granted liberty to the Sangh to reagitate the mater before the appropriate Government and expressed the hope that the appropriate Government would consider the matter in a proper perspective in the light of the documents and the materials that would be placed by the Sangh, in accordance with law. The writ petition was dismissed subject, however, to the observation and direction mentioned above.

Pursuant to the liberty granted by the High Court, the Sangh made a representation to the Government for a reference of the dispute under section 10(1) of the Act. The Deputy Labour Commissioner, Jamshedpur, by his letter dated November 6, 1986 gave the same reply and refused to make a reference.

A Again, the appellant-Sangh moved a writ petition before the High Court and, as stated already, the High Court summarily dismissed the same holding that the appellants had failed to *prima facie* satisfy that they were employed either by TELCO or by the Telco Contractors' Association. Hence this appeal.

B It has been urged by Mr. Pai, learned Counsel appearing on behalf of the appellants, that the Government exceeded its jurisdiction in purporting to decide the dispute raised by the appellant-Sangh in the said letter of demand. Counsel submits that in the facts and circumstances of the case, the Government should have made a reference to the Industrial Tribunal under section 10(1) of the Act for the adjudication of the dispute of the convoy drivers and should not have C embarked upon the task of deciding the dispute on its merits through the Deputy Labour Commissioner.

On the other hand, it has been vehemently urged by Mr. Shanti Bhusan, learned Counsel appearing on benalf of TELCO, that the D Government has the jurisdiction to consider whether any industrial dispute exists or not and, in considering the same, as the Government found that the convoy drivers were not even workmen of TELCO or, in other words, there had been no relationship of master and servants between TELCO and the convoy drivers, the Government refused to make a reference of the dispute under section 10(1) of the Act. It is E submitted that the refusal by the Government to make a reference was perfectly within its jurisdiction inasmuch as, in the opinion of the Government, there was no existence of any industrial dispute.

After conclusion of the hearing, we took the view that the Government should be given one more chance to consider the ques- F tion of making a reference and, accordingly, we by our order dated March 30, 1989 directed the Government to reconsider the question of referring the dispute raised by the convoy drivers to the Industrial Tribunal under section 10 of the Act, keeping the appeal pending before us.

G The learned Counsel, appearing on behalf of the Government, has produced before us an order dated April 13, 1989 of the Government whereby the Government has, upon a reconsideration of the matter, refused to make a reference under section 10(1) of the Act. In refusing to make a reference, the Government has adjudicated the dispute on its merits.

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It is true that in considering the question of making a reference under section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly, not permissible.

It is, however, submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in section 2(k) of the Act. It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the Government is whether the persons who are raising the disputes are workmen or not within the meaning of the definition as contained in section 2(k) of the Act.

Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. See *Ram Avtar Sharma* v. *State of Haryana,* [1985] 3 SCR 686; *M.P. Irrigation Karamchari Sangh* v. *The State of M.P.,* [1985] 2 SCR 1019 and *Shambhu Nath Goyal* v. *Bank of Baroda, Jullundur,* [1978] 2 SCR 793.

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

A whether the person 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 exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either B 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 valid disputes, and that to allow the Government to do so would be to render section 10 and section 12(5) C of the Act nugatory.

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 emp- D loyees 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.

It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after E 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 F 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 Thozhilalar Munnetra Sangam* v. *Government of* G *Tamilnadu,* [1983] 1 LLJ 460; *Ram Avtar Sharma* v. *State of Haryana,* [1985] 3 SCR 686; *M.P. Irrigation Karamchari Sangh* v. *The State of M.P.* [1985] 2 SCR 1019 and *Nirmal Singh* v. *State of Punjab*, [1984] 2 LLJ 396.

In the circumstances, we direct the State of Bihar to make a H 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. A

The appeal is allowed and the judgment of the High Court and the impugned orders are set aside. There will, however, be no order as to costs. B

T.N.A. Appeal allowed.