

CIVIL WRIT

Before Bishan Narain, J.

MESSRS GOVERDHAN DAS AND OTHERS,—Petitioners.

versus

THE SECOND PUNJAB INDUSTRIAL TRIBUNAL,
AMRITSAR AND OTHERS,—Respondents.

Civil Writ No. 113 of 1956.

Industrial Disputes Act (XIV of 1947)—Object of—Sections 10, 12, 18 and 19—Settlement reached between the employers and employees without the intervention of the Conciliation Officer—Whether settlement under section 12(3)—Whether it precludes the State Government from referring the same dispute to the Industrial Tribunal—Settlement not accepted by one of two unions—Whether State Government competent to refer that dispute to the Industrial Tribunal—Reference under section 10 by State Government—Whether administrative act.

1957

May, 22nd

Held, that the object of the Industrial Disputes Act is to achieve industrial peace so that the management and the workmen may remain satisfied with the general working conditions in the industry and thus increase production. The Act contemplates that Conciliation Officers appointed under the Act should bring about conciliation between the parties when a dispute arises or is apprehended and if such a settlement or conciliation cannot be reached then the same may be adjudicated upon under section 10 or section 10-A of the Act.

Held, that a private settlement arrived at between the employers and the employees otherwise than under section 12 of the Act does not preclude the State Government from making a reference of the same dispute to the Industrial Tribunal for adjudication under section 10 of the Act.

Held further, that settlement between the employers and representatives of one of the two Unions of workmen which has not been accepted by the other Union does not preclude the State Government from referring the same dispute to the Industrial Tribunal for adjudication under the Act.

Held, that the Government in making a reference under section 10 is doing an administrative act and it is for the Government to decide upon the factual existence of the dispute and on the expediency of making a reference.

The State of Madras v. C. P. Sarathy and another (1), relied on.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of prohibition certiorari or mandamus be issued quashing the notification No. 2034-C.LP-56/11978 and further praying that responderis Nos. 1 and 2 be restrained from proceeding with the reference.

BHAGIRATH DASS and RAJINDER SACHAR, for Petitioner.

S. M. SIKRI, Advocate-General and ANAND SWAROOP, for Respondent.

ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—The State Government of the Punjab in writing referred five disputes to the Second Industrial Tribunal, Punjab, Amritsar, under section 10(1)(c) of the Industrial Disputes Act, 1947 (No. 14 of 1947), as in its opinion these disputes existed between the workmen and the management of eight industrial establishments (metal industries). The necessary notification was issued on 19th March, 1956. Two of these industrial concerns have filed this petition under Article 226 of the Constitution challenging the validity of this reference.

This petition was based on certain grounds but it is not necessary to refer to them as the learned counsel for the petitioners did not press these grounds before me in view of the recent decisions of their Lordships of the Supreme Court. The learned counsel however, urged that in view of settlement between the management and the workmen under section 12(3) of the Act the reference was illegal as in

(1) A.I.R. 1953 S.C. 53.

such a case it cannot be said that a dispute existed or was apprehended so as to justify a reference to the Industrial Tribunal. This ground was taken in an application for stay of proceedings before the Tribunal and, therefore, on 14th March, 1957, I permitted the petitioners to raise this point in the interests of justice as it had also been raised in other writ petitions and I have treated the stay application as supplementary to the main application. Thereafter I adjourned the case to enable the respondents to file a reply to this allegation. The reply and a counter reply have now been filed.

Messrs
Goverdhan Das
and others
v.
The Second
Punjab Industrial
Tribunal,
Amritsar
and others.

—————
Bishan Narain, J.

In the supplementary petition all that was stated was that there was a conciliation under section 12(3) of the Act and, therefore, there was no dispute which could be referred to the Tribunal. The Labour Commissioner has filed a detailed reply. He has stated that on 9th December, 1955, the District Metal Mazdoor Union (Registered) Jullundur served a notice of demands on the employers and when these demands were not satisfied the workers went on strike. During the strike another trade union known as the Azad Factory Workers Union, Jullundur, which was at that time an unregistered body, served another demand notice containing demands almost identical with those of the Mazdoor Union. It appears that negotiations had been going on between the employers and the Mazdoor Union, since December, 1955 (*vide* copies of letters produced by the Mazdoor Union). Ultimately the Commissioner himself decided to interfere in view of the serious situation that had arisen in metal industry. A meeting was arranged for 14th March, 1956. In this meeting the representatives of the employers of the District Metal Mazdoor Union, the General-Secretary of All-India Trade Union Congress with which the Mazdoor Union is affiliated and the Azad Factory Workers Union were present. No settlement was reached in the

Messrs
Goverdhan Das
and others
v.
The Second
Punjab Indus-
trial Tribunal,
Amritsar
and others
Bishan Narain, J.

meeting and the Commissioner left the meeting. Later on the representatives of the employers and of the Azad Factory Workers Union went to the railway station and informed the Commissioner that a compromise had been reached between the parties before him, i.e., between the employers and the Azad Factory Workers' Union and a request was made to him that he may sign it. The Labour Commissioner, however, refused to do so. According to the Labour Commissioner the Mazdoor Union is a registered body, since some time before the present dispute arose in December, 1955, and the Azad Union was registered on 20th April, 1956, i.e., after the alleged conciliation. It appears that the Labour Commissioner has made inquiries into the credentials of the two Unions and according to him total membership of the Mazdoor Union is 800, while that of the Azad Union is 150.

The Mazdoor Union on its own application is also before me. It says that the demand notice was served by it on the employers in December, 1955, and they had been dealing with this Union even during the strike till a spurious Azad Union was set up which was not registered. The allegation is that the Azad Union consists of workers who had not joined the strike. The Mazdoor Union denies like the Labour Commissioner that there was any conciliation within section 12(3) of the Act.

The petitioners have given a version of the meeting of 14th March, 1956, which is not only different but is in direct conflict with that given by the Labour Commissioner. They state that in the course of conciliation proceedings under section 12 of the Act the credentials of the Mazdoor Union to present the workmen were challenged on 29th February, 1956, and the Union's representatives without giving a satisfactory reply walked out of the meeting. According to them the Mazdoor Union was not represented in the meeting of 14th

March, 1956, while all the others mentioned by the Labour Commissioner were present. The meeting lasted for six hours and then a settlement was reached upon direct intervention of the Labour Commissioner. The settlement was finally typed by the stenographer of the Labour Commissioner and then it was signed by all the parties concerned including the Labour Commissioner. It is alleged that the proceedings of 14th March, 1956, were initiated by the Commissioner who is a Conciliation Officer under the Act and a settlement was reached in his presence which settlement was signed by him and by the representatives of the industrial establishments concerned and the Azad Factory Workers Union. It is, further, alleged that the Azad Union is affiliated to the Indian National Trade Union Congress.

Messrs
Goverdhan Das
and others
v.
The Second
Punjab Industrial
Tribunal,
Amritsar
and others

Bishan Narain, J.

I have given in some detail the conflicting versions of the meeting of 14th March, 1956. It is neither satisfactory nor proper to determine this dispute in these proceedings which are essentially of a summary nature. It may, however, be assumed for the purposes of this case that there was a settlement between the employers and the Azad Union on 14th March, 1956. The settlement which is alleged to have been typed is not before me. It is alleged to have been signed by the petitioners and the Azad Union and it may or may not have been signed by the Labour Commissioner. I refrain from deciding this matter. The copy produced by the petitioners in this petition or other writ petitions does not admittedly bear the signatures of the Labour Commissioner. In this unsatisfactory state of affairs two questions arise—

- (1) Whether the settlement between the employers and the employees if reached without the intervention of the Conciliation Officer or Commissioner can be considered to be a settlement under section

Messrs
Goverdhan Das
and others
v.
The Second
Punjab Indus-
trial Tribunal,
Amritsar
and others

Bishan Narain, J.

12 (3) of the Act which would preclude the State Government from referring the same matter to the Industrial Tribunal, and

- (2) (2) Whether assuming the settlement to be under section 12(3) of the Act, the State Government is precluded from referring the same matter to the Industrial Tribunal when another Union representing some workmen at least is not accepting that settlement?

The first question deals with a private settlement between the management and its workmen. The question is whether a private settlement between them and without the intervention of the Conciliation Officer would preclude the Government from referring the same matter to the Industrial Tribunal as an existing or apprehended dispute under section 10 of the Industrial Disputes Act, 1947. It is well established that the object of this Act is to achieve industrial peace so that the management and the workmen may remain satisfied with the general working conditions in the industry and thus increase production. The Act contemplates that Conciliation Officers appointed under the Act should bring about conciliation between the parties when a dispute arises or is apprehended and if such a settlement or conciliation cannot be reached then the same may be adjudicated upon under section 10 or section 10-A of the Act. To my mind conciliation proceedings are just as important if not more important as adjudication proceedings. Section 12 of the Act deals with conciliation proceedings. Sections 18 and 19 lay down that a settlement arrived at in the course of conciliation proceedings under the Act shall be binding on all parties to the industrial dispute. There can be obviously no existing or apprehended dispute between the parties if they reach a settlement under the Act. It appears to me that the wordings employed

under sections 18 and 19 exclude the applicability of the Act to a private settlement which is not arrived at in the course of conciliation proceedings under the Act. There is a reason behind it. Considering the industrial conditions in this country and considering the comparatively unorganized labour a settlement to achieve the object underlying this Act should be fair to both the parties so that it may be lasting. Such a settlement should not depend on the bargaining power or weakness of a party to a dispute at a given time. There can be no permanent industrial peace in an industry unless both the employers and the workmen obtain fair terms for their labour which are commensurate with a trading condition in the industry. A private settlement may or may not be binding on the parties under a general law but in the concept of an industrial dispute such a settlement has no place. If it be held that a private conciliation settles an industrial dispute, then it will be open to the employers to approach individual workmen and settle with each of them separately. Such a settlement cannot obviously result in industrial peace and is likely to make the workers as helpless as they had been before the labour legislation was introduced in this country. The possibility of an employer settling a dispute with individual workmen is contrary to the object and purpose of the Industrial Disputes Act. All the provisions of this Act and also section 36 contemplate that workmen are to be represented in proceedings under the Act as a body and not as individuals. Industrial peace can be attained and secured only by collective bargaining and not otherwise. I am, therefore, of the opinion that a private settlement of the present type does not preclude the Government from making a reference to the Tribunal under the Industrial Disputes Act.

The next question that arises assumes that there is a conciliation under section 12 of the Act but it

Messrs
Goverdhan Das
and others

v.

The Second
Punjab Industrial
Tribunal,
Amritsar
and others

—————
Bishan Narain, J.

Messrs
Goverdhan Das
and others
v.

The Second
Punjab Indus-
trial Tribunal,
Amritsar
and others

—————
Bishan Narain, J.

is not accepted by another and a rival trade union which is not a party to the settlement. The legal position in this matter is rather obscure. Section 36(1) of this Act reads— :

“A workman who is a party to a dispute shall be entitled to be represented in any proceedings under this Act by—

- (a) an officer of a registered trade union of which he is a member;
- (b) an officer of a federation of trade union to which the trade union referred to in clause (a) is affiliated;
- (c) where the worker is not a member of any trade union by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.”

This section does not provide for a settlement of the dispute that may arise between two rival trade unions claiming to represent the workmen in the industrial establishment. The rules framed under the Act also do not throw any light on the matter. Presumably the Conciliation Officer proceeds under section 12 and the Tribunal under section 10 must decide this dispute between the rival unions. There is, however, no provision in the Act nor in the Rules which indicates the grounds on which this dispute is to be decided. It is true that section 36 speaks of registered trade unions. A trade union, however, is registered under section 8 of the Indian Trade Unions Act, 1926 (Act No. 16 of 1926). This Act does not empower a Registrar to refuse registration on any ground which would have the effect of adjudicating upon the rival claims of trade unions to represent workmen in a given industry. I consider this matter

to be an important one. The dispute between two rival unions must be decided promptly and effectively otherwise there can be no lasting industrial peace in the country. The present state of affairs may lead the employers to set up a spurious trade union as is alleged in the present case and a few workmen in an industry may combine to raise a strong, irresponsible and unreasonable demand and thus endanger industrial peace. When such positions can be taken up by employers or workmen then there can be no reconciliation at all because they will be interested in making their demands as extreme as possible. In the present case, it is true that the Azad Factory Workers Union was registered after the reconciliation proceedings of 14th March, 1956, but it may well have been registered earlier.

Messrs
Goverdhan Das
and others
v.
The Second
Punjab Indus-
trial Tribunal,
Amritsar
and others

—————
Bishan Narain, J.

In any case in such a disputed claim of the two rival trade unions particularly when the dissatisfied union is the one which was the first to issue demand notice and at whose bidding some at least of the workmen resorted to strike it appears to me that the Government was fully justified and was within its right to refer the dispute to the Industrial Tribunal. It must be remembered that the Government in making a reference under section 10 is doing an administrative act and it is for the Government to decide upon the factual existence of the dispute and on the expediency of making a reference. This has been authoritatively decided by their Lordships of the Supreme Court in *The State of Madras v. C. P. Sarathy and another* (1).

I am, therefore, of the opinion, for all these reasons that the reference in the present case cannot be held to be invalid.

The result is that this petition fails and is dismissed with costs. Counsel's fee Rs. 100.

(1) A.I.R. 1953 S.C. 53