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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 276/89

T.A. No.

DATE OF DECISION 27/9/1993

Bhari Pani Kamdar Sangh & Anr. Petitioner

Mr. Girish Patel Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. B. Patel : Vice Chairman

The Hon'ble Mr. V. Radhakrishnan : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No.

1. Bhari Pani Kamdar Sangh,
through its General Secretary,
Shri S.K.Panchal,
Heavy Water Plant,
Fertiliser Nagar-391 750
(Vadodara)
2. Shri D.M.Jaiswal,
Ex-Member, Heavy Water Plant,
Fertilizer Nagar,
Vadodara-391 750.

: Applicants

(Advocate: Mr.Girish Patel)

Versus

1. Union of India
Through:
The Secretary, Ministry
of Science & Technology,
New Delhi.
2. Union of India
Through:
The Secretary,
Ministry of Labour,
Govt. of India,
New Delhi.
3. Heavy Water Project,
Department of Atomic
Energy, (through its
Chief Executive),
P.O.Fertilizer Nagar-391750.
4. Heavy Water Plant,
(through its General
Manager), P.O.Fertilizer Nagar
Vadodara-391 750.
5. Heavy Water Plant,
(through its Admn.Officer)
P.O.Fertilizer Nagar,
Vadodara-391750.

: Respondents

(Advocate: Mr.Akil Kureshi)

ORAL JUDGMENT

IN

OA/276/89

Date:27/9/1993

Per: Hon'ble Mr.N.B.Patel

: Vice Chairman

The applicants Bhari Pani Kamdar Sangh, through its General Secretary, Shri S.K.Panchal, Heavy Water Plant, Fertilizer Nagar, Vadodara and one of its members,

namely, Shri D.M.Jaiswal, challenge the legality of the order Annexure A-3, dated 14.4.1989, whereby the Central Government has refused to refer to the Industrial Tribunal the industrial dispute involved in Demands No.1 and 7 raised by the applicants' union against the Heavy Water plant, Vadodara on the ground that the new system of shifts introduced by the Heavy Water Plant, Vadodara ^{the} does not add to z burden of the workmen and also on the ground that in some other four operating Heavy Water Projects, the new shift system has been accepted by the employees through their union.

2. It appears that Demands No.1 & 7, which were referred to the Conciliator, were in respect of some changes introduced by the management in what is called Rota System and in respect of shift allowance payable to the employees. The Conciliator reported failure and the matter was then examined by the Central Govt. in the Ministry of Labour and it was then that the impugned order referred to above has been passed.

3. The main contention urged on behalf of the applicants by t/y learned counsel Mr.Girish Patel was that the Government had no authority to decide the merits of the controversy between the employees and the management and to refuse reference to the Industrial Tribunal on the ground that there was no merit in the case of the employees. Mr.Patel urged that this is exactly what the Government has done while passing the impugned rejection order. In support of his contention, Mr.Patel, cited the case of Telco Convoy Drivers Mazdoor Sangh and Another vs. State of Bihar and Others (AIR 1989 SC 1565) wherein the

Supreme Court has clearly laid down that, while exercising power under Section 10(1) of the Industrial Disputes 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. It is further held 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", but 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. It is thus clear that the administrative function of the appropriate Government — — — under Section 10(1) does not empower it to adjudicate upon the merits of the dispute, once it is found that an industrial dispute does exist or is apprehended. In the present case, the order is not passed on the ground that no industrial dispute exists between the employees and the management. The Central Government has refused to refer the dispute to the Industrial Tribunal on the ground that the proposed change in the shift system will not add to the burden of the workmen. The exact controversy between the workmen and the management was whether the new change in the shift system proposed by the management imposed any additional burden on the workers or not. It is obvious, from what is laid down by the Supreme Court in the aforesaid decision, that it was outside the purview of the authority of the Central

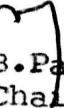
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Govt. under Section 10(1) of the Industrial Disputes Act to adjudicate upon the merits of this controversy. This is, therefore, a clear case where the Central Govt. has ~~cover~~stepped its authority in refusing to refer to the dispute to the Industrial Tribunal. The impugned order is, therefore, liable to be set aside and consequential directions are required to be given to the Central Government.

4. In the result, therefore, the application is allowed and the order at Annexure A-3 dated 14.4.1989 refusing to refer the dispute involved in Demands No.1 and 7 to the Industrial Tribunal, is hereby quashed and set aside and the Central Govt. (Ministry of Labour), i.e Respondent No.2, is directed to refer Demands No.1 and 7 relating to the new shift ~~system~~ to the concerned Industrial Tribunal. Reference will be made within four weeks from the date of the receipt of a copy of this order. No order as to costs.



(V.Radhakrishnan)
Member (A)



(N.B. Patel)
Vice Chairman

a.a.b.