

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(4)

O.A. NO: 732/92

199

T.A. NO: --

DATE OF DECISION 12-11-1992

India Security Press and
Currency Press Staff Union

Petitioner

Mr.G.K.Masand with Mr.H.D.Rjani and
Mr.G.R.Menghani

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr.P.M.Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr.Justice S.K.Dhaon, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

- 1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
- 2. To be referred to the Reporter or not ? *Yes*
- 3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
- 4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

MD

(S.K.DHAON)

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.732/92

India Security Press and
Currency Press Staff Union,
(Represented C&D group
employees)
through its General Secretary,
ISP, Green Gate, Nashik Road,
Central Railway,
Nashik 422 101.

(2) V.H.Thakur,
Head Clerk,
Central Stamp Depot.,
Nashik Road. . . Applicants

-versus-

1. Union of India
Secretary,
Department of Law and
Judiciary,
Aayakar Bhavan,
New Marine Lines,
Bombay - 400 020.
2. Desk Officer,
Govt. of India,
Ministry of Labour,
New Delhi.
3. General Manager,
Indian Security Press,
Nashik Road 422 101.
4. General Manager,
Currency Note Press,
Nashik Road 422 101. . . Respondents.

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.G.K.Masand with
Mr.H.D.Rajani and
Mr.G.R.Menghani
Advocate for the
applicants.
2. Mr.P.M.Pradhan
Counsel for the
Respondents.

JUDGMENT: Date: 12-11-92
(Per S.K.Dhaon, Vice-Chairman)

This application has been filed in a
representative capacity by the India Security
Press and Currency Note Press Staff Union through

its General Secretary. The order dt.26-6-92 purported to have been passed by the Central Government refusing to refer an industrial dispute for adjudication under Section 10 of the Industrial Disputes Act is being impugned in the present application. (6)

2. The applicant union represents 182 Class III and Class IV employees of the Currency Note Press and 355 Class III and Class IV employees of the India Security Press. The members of the Union are employed at Nashik. The controversy has arisen by the increase of the working hours of the members of the applicant union from 37½ hours to 44 hours per week with effect from 7-2-1988.

3. On 16-1-1988 the General Manager, India Security Press in the purported exercise of power under Section 9-A of the Industrial Disputes Act,1947,hereinafter referred to as the Act,gave notice to all concerned that he intended to effect a change in the working hours of the employees employed in the India Security Press including Central Stamp Depot, I.S.P Hospital and I.S.P. Dispensary, Nashik Road whose normal working hours ~~was~~ ^{were} 37½ hrs. per week to 44 hrs. per week. On 16-1-1988 the General Manager of the Currency Note Press issued a similar notice. Dissatisfied with the change, the General Secretary of the India Security Press and Currency Note Press Union served a notice upon the General Manager Currency Note Press under Sub-section (1) of Section 22 of the Act stating therein that all the Class II and

Class III non-gazetted employees proposed to go on indefinite strike with effect from 8-2-1988. The Assistant Labour Commissioner(O) Bombay commenced conciliation proceedings on 11-5-1988. It was decided before the Conciliation Officer that the Ministry of Finance had decided to implement the increase in the working hours simultaneously and uniformly in all the Mints and Presses of the Country. In the conciliation proceedings the Management agreed to wait for the decision of the Calcutta High Court regarding the increase in the working hours and not to implement/enforce the changes proposed. The Union agreed to withdraw the strike notice served on the Management of India Security Press and Currency Note press with immediate effect.

4. However, Managers of the India Security Press and the Currency Note Press on 8-10-1991 issued notice, stating therein that the working hours would be revised from 37½ hrs. to 44 hrs. On 10-10-1991 the Union gave a strike notice under section 22 of the Act with a demand that the aforementioned notice, dt. 8-10-1991 may be withdrawn forthwith. The communication was also sent to the Regional Labour Commissioner by and on behalf of the applicant Union. The applicants filed an application before this Tribunal u/s.19 of the Administrative Tribunals Act, 1985 and on 12-5-1991 an interim order was passed directing the respondents to maintain status quo for a period of two weeks from the date of the decision, in case the same was against the

applicants. The Conciliation Officer submitted a failure report dt. 28-4-1992. Instead of making a reference of the dispute for adjudication, the impugned order was passed.

5. The applicant challenged the legality of the impugned order by means of Writ Petition No.2848/92 before the High Court at Bombay. However, on 16-7-1992 the applicants sought permission to withdraw the said Writ Petition and the permission was accorded. We may now immediately come to the impugned order. It will be profitable to extract the relevant portion of the same:

"It has been reported that the decision to increase the working hours of India Security Press and the Currency Note Press Nasik is the result of implementation of policy decision taken by the Government to increase the working hours consequent upon the acceptance of the recommendations of the 4th Pay Commission. It has already been reported that the petitions moved by the employees/union of various units under the Deptt. of Economic Affairs in this regard has been dismissed by the Administrative Tribunals/State High Courts".

6. In the reply filed on behalf of the respondents no reference has been made of any decision given by any Administrative Tribunal ~~xxxanyxhighxCourt~~ or any State High Court wherein the decision taken to increase the working hours from 37½ per week to 44 hrs. per week has been upheld. However, to the replies filed a true copy of the order passed by the Calcutta High Court in C.O.No.9523(W)

of 1988(Calcutta Mint Employees' Union & Ors. Vs. India Government Mint & Ors) decided on 7-1-1991 has been annexed. A perusal of the same indicates that the Calcutta High Court dismissed the Writ Petition on the sole ground that the same was not maintainable in view of Section 14 of the Central Administrative Tribunals Act,1985. We have already referred to the applications filed by the applicants before this Tribunal. In Those applications, as already stated, were filed at the stage when the conciliation proceedings were going on and the applicants had apprehended at the failure of the same and the consequent implementation of the decision to increase the working hours. We may indicate that no decision on merits of the said application has been given.

7. It is apparent that the recital in the impugned order that the challenge to the increase in the working hourse had been negatived by the Administrative Tribunals and State High Courts is factually incorrect. The Central Government,therefore, based its order on some of the grounds which were non existent. It appears to us that the dominant reason for not making a reference is the fact that the challenge has been repelled by the Administrative Tribunals and State High Courts. This reason, in our opinion, is not severable from the rest of the order afoe-quoted. The order, therefore, is liable to be struck down on this short ground alone.

8. Sections 10 and 12(5) of the Act have to be considered harmoniously for

examining the question as to whether the Central Government, while passing the impugned order, exceeded its jurisdiction. It is true that sub-section 5 of Section (12) enjoins that reasons for refusal should be given. It is ~~well~~ ^{the} ~~exactly~~ well settled that, while making up its mind as to whether a reference should or should not be made, the appropriate Government is empowered to examine ~~it~~ in a particular case ~~the~~ ~~not~~ ~~merits~~ ~~of~~ ~~the~~ ~~dispute~~ ~~but~~ ~~it~~ ~~has~~ ~~only~~ ~~to~~ ~~find~~ ~~if~~ ~~a~~ ~~out~~ ~~prima~~ ~~facie~~ a case for reference is made out ~~on~~ ~~lis~~ or not. Adjudication of the dispute ~~which is~~ sought to be ~~referred~~ ~~xx~~ ~~xx~~ on merits is beyond the purview of the appropriate government. We have read the impugned order carefully more than once and we are satisfied that the contents of the order clearly convey that the Central Government examined the merits of the case and came to the conclusion that the increase in the working hours was justified.

9. In Ram Avtar Sharma and Ors. vs. State of Haryana (AIR 1985 SC 915) the Supreme Court examined the question as to what are the parameters of power of the appropriate Government under Sec.10 while making or refusing to make a reference to an industrial tribunal for adjudication of an industrial dispute. The Supreme Court emphasised that while exercising power under S.10(1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function. Therefore, if the Government performs an administrative act while either making or refusing to make a reference under S.10(1), it cannot delve into the merits of the dispute

and take upon itself the determination of lis. That would certainly be in excess of the power conferred by S.10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine *prima facie* whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. It is also laid down that it is necessary to examine the reasons given by the Government to ascertain whether the determination of the Government was based on relevant considerations or irrelevant, extraneous considerations not germane to the determination. We have already taken the view that the appropriate Government really decided the lis. It ~~also~~ ^{ought} to take into account matters which were ~~not~~ non-existent and, therefore, it can be said that the impugned order is not based on relevant considerations.

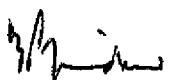
10. Shri Pradhan, learned counsel for the respondents, has cited the following authorities in support of his submission that the Central Government, in the instant case, did not exceed its jurisdiction while refusing to make a reference for adjudication. The cases are (1) State of Bombay v. K.P.Krishnan, AIR 1960 SC 1223 (2) Bombay Union of Journalists and Others v. The State of Bombay and another, AIR 1964 SC 1617, and (3) M/s. Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana and others, AIR 1979 SC 170.

11. In the first case it is held that under Sub-section (5) of Section 12, the Government can consider other relevant facts besides the report of Conciliation Officer. It is also emphasised that if, in refusing to make a reference, Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a court of law. In the second case it is laid down that the Government is not precluded from considering *prima facie* the merits of dispute and refuse to refer dispute under S.10. It is also emphasised that while entertaining an application for a writ of mandamus against an order made by the appropriate Government under S.10(1) read with S.12(5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. There can be no quarrel with the proposition laid down in the case, On the contrary, ^{are} they binding upon us. However, in this very case it is emphasised that if it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign, that no doubt, may justify the claim for a writ of mandamus. This authority does not lay down that the appropriate Government is entitled to give a decision on the merits of the lis. In the instant case we have already taken the view that the appropriate Government has taken into consideration extraneous matters namely matters not in existence. In the last case, it is emphasised that the adequacy or sufficiency of the material for formation

of the opinion of the appropriate Government on the question whether a reference should or should not be made is/justiciable. This case has no application on the facts of the instant case is, and/therefore, not apposite.

12. This application succeeds and is allowed. The impugned order of the Central Government is quashed. The Central Government is directed to reconsider the question as to whether a reference should be made for adjudication of the dispute. The Central Government shall give its decision on merits in the light of the observation made above. It shall do so within a period of two months from the date of production of a certified copy of this order before the appropriate authority. The applicants are permitted to transmit a certified copy of this order to the appropriate authority under Regd. Post A.D.

13. There shall be no order as to costs.


(M.Y.PRIOLKAR)

Member(A)


(S.K.DHAON)
Vice-Chairman

MD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

(15)

RP NO. 206/92 IN OA NO.732/92

Union of India
Secretary of Law & Judiciary
Aayakar Bhavan
New Marine Lines
Bombay 20 & 3 ors.

Petitioners
(Original respondents)

v/s.

1. India Security Press and
Currency Press Staff Union
(representing 'C' & 'D' group
employees) through its
General Secretary,
India Security Press
Near Green Gate
Nashik road; Nashik

2. Shri V H Thakur
Head Clerk
Central Stamp Depot.
Nashik Road

Respondents
(Original applicants)

Coram : Hon. Shri Justice S K Dhaona, Vice Chairman
Hon. Shri M Y Priolkar, Member(A)

TRIBUNALS ORDER:
(Per: S K Dhaon, Vice Chairman)

DATED: 15 .1.1993

This is an application on behalf of Union of India and others (respondents in O A No. 732/92) praying that we may review our order dated 12.11.92 finally disposing of the aforesaid OA.

In the OA the order dated 26.6.92 purported to have been passed by the Central Government, refusing to refer an industrial dispute for adjudication, had been challenged.

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In paragraph 5 of our order we extracted a passage from the impugned order. The relevant portion of ~~the same~~ ran as follows:

"It has been reported that the decision to increase the working hours of India Security Press and the Currency Note Press Nasik is the result of implementation of policy decision taken by the Government to increase the working hours consequent upon the acceptance of the recommendations of the 4th Pay Commission. It has already been reported that the petitions moved by the employees/union of various units under the Department of Economic Affairs in this regard has been dismissed by the Administrative Tribunals/State High Courts".

Paragraph 6 of our order in the said O A No. 732/92 runs as under:

"6. In the reply filed on behalf of the respondents no reference has been made of any decision given by any Administrative Tribunal or any State High Court wherein the decision taken to increase the working hours from $37\frac{1}{2}$ per week to 44 hours per week has been upheld. However, to the replies filed a true copy of the order passed by the Calcutta High Court in C.O. No. 9523(W) of 1988 (Calcutta Mint Employees' Union & Ors. V. India Government Mint & Ors.) decided on 7.1.91 has been annexed. A perusal of the same indicates that the Calcutta High Court dismissed the Writ Petition on the sole ground that the same was not maintainable in view of Section 14 of the Central Administrative Tribunal Act, 1985. We have already referred to the applications filed by the applicants before this Tribunal. Those applications, as already stated, were filed at the stage when the conciliation proceedings were going on and the applicants had apprehended the failure of the same and the consequent implementation of the decision to increase the working hours. We may indicate that no decision on merits of the said applications has been given."

In Paragraphs 10 and 11 of the review application the averments are these. The bench of this Tribunal at

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Hyderabad in OA Nos. 27 of 1988, 39/1988, 71/1988 and 74/1988 had held that increase in the working hours from 37½ to 44 hours per week is in the light of the recommendations of the 4th Central Pay Commission and therefore the decision was not hit by Articles 14 and 16 of the Constitution.

Similar orders were passed by a Bench of this Tribunal at Jabalpur on 22.8.1988 in OA Nos. 94/1988 and 113/1988. Paragraph 12 of the review application has relevance and the contents of the said paragraph are:

"Petitioners state that the said decisions were deemed to be brought to the notice of this Hon. Tribunal as is clear from the observations as contained in para six of the Judgement of the Tribunal in respect of which present review application is being filed, and therefore there is a clear case for seeking review of the said order, as had these judgements been brought to the notices, the order would have been otherwise, and therefore it is verymuch necessary in the interest of the justice and in the light of the said decisions on the points which were mentioned by the Tribunal in the judgement under para six that the present review application should be considered and the entire case be reviewed as per the decision of these two Benches of the Tribunals."

It is admitted in paragraph 12 as aforesaid that the aforesaid decisions of the Hyderabad and the Jabalpur Benches of this Tribunal were not brought to our notice at any stage prior to the making/filing of the review application. The contention, in substance, is that in view of the aforesaid decisions of the Hyderabad and Jabalpur Benches, we should review our order. It is not the case of the applicants in the review application that the Union of India and ors. (applicants in this application) were not aware of the said decisions when the matter was argued before us. It is also not their case that they could not lay their hands on the

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said decisions in spite of exercise of due diligence. It is not their case nor can it be that the said decisions came into existence after our order dated 12.11.92.

We have considered the contents of the review application carefully and we are satisfied that no case has been made out within the parameters of Order 47 Rule 1 of Civil Procedure Code so as to entitle us to review our order.

We are disposing of this application by adopting the process of circulation which is permissible under the Rules.

The review application is rejected.


(M Y Priolkar)
Member(A)


(S K Dhaona)
Vice Chairman