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C.A.No. 1034-1046 OF 2003
ITEM No. 104 Court No. 2 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos.1034-1046/2003

BHERU LAL SHARMA & ORS. Appellant (s)

VERSUS

M/S. BHILWARA PROCESSORS LTD. & ORS. Respondent (s)

(with office report)

Date : 25/01/2005 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)Mr. P.N. Mishra, Sr. Adv.
Ms.K.L. Janjani, Adv.
Mr.Pankaj Kumar Singh, Adv.
Dr. Vinod Tewari, Adv.
Ms. Medhavi Kumar, Adv.

For Respondent (s)Mr. V.R. Reddy, Sr. Adv.
Mr. Rajeev Sharma, Adv.
Mr. V.M. Chauhan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Learned counsel for the parties argued the matter

for about half an hour. Hearing concluded.

The appeals are allowed in terms of the signed order.

(PAWAN KUMAR) (PREM PRAKASH)
COURT MASTER COURT MASTER
(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1034-1046 OF 2003

Bheru Lal Sharma & Ors. ?Appellants.

Versus

M/s.Bhilwara Processors Ltd. & Ors. ?Respondents.

O R D E R

On a dispute having arisen between the respondent-management and the appellant-labour who are parties to these appeals, the Government of Rajasthan by its order dated 3rd June, 1999 referred it for decision by the Labour Court. One of such identical reference reads thus :

"Whether discontinuation of labour Satya Narayan s/o Shri Mangi Das Vaishnav, Post Biliyan Kalan, Tehsil Bhilwara, District Bhilwara, from service w.e.f. 23.6.1997 by Manager, M/s Bhilwa

ra Processors Ltd., Mandapam, Bhilwara is just and legal ? If not, which relief the labour is entitled to ?"

When this Reference was pending consideration before the Labour Court, a writ petition came to be filed before the learned Single Judge of the High Court of Judicature for Rajasthan at Jodhpur. The said writ petition came to be dismissed by the learned single Judge on the ground that at the Reference was at an interlocutory stage, therefore, it is not a fit case for the High Court to interfere under Article 226. In an appeal against the said order of the learned Single Judge the Division Bench of the said High Court came to the conclusion that the writ petition should not have been rejected on the ground that it was filed at an interlocutory stage and going to the merits of the case involving facts, recorded a finding that the Reference itself was uncalled for on the facts of the case, therefore, the proceedings which are pending before the Labour Court in the main case was directed to be terminated. It further directed that the employee-respondents, in case, they report for duty with the appellant within a period of one month from the date of judgment, should be taken back on duty but no financial liability would entail on the management for the period from 23rd June, 1997 till their reporting for duty. It is this order of the Division Bench of the High Court which is in challenge before us.

On behalf of the appellants, it is contended that the question referred to the Labour Court was primarily a question of fact including the objection as to its maintainability, which could not have been decided without adducing evidence. It is pointed out that it is the case of the workmen that the management with oblique motive, ostensibly closed its folding section where the appellants were working and handed over the same to its sister concern and in the guise of so closing that section the appellant-workmen were transferred to a machine section where the appellant-workmen were not competent to work. It is also contended that even the contention of the management that these workmen did not report to duty after their transfer is also a question of fact which will also have to be decided based on the evidence brought on record. In such factual background, it is argued that it is not possible for a court under Article 226 to decide the issue posed for its consideration and that the learned Single Judge rightly rejected the writ petition of the respondent-management. Learned counsel for the respondent-management, however, contended that in view of the opinion recorded by the Conciliation Officer there could be no disputed question of fact and the fact that the appellant-workmen did not attend the work after their transfer is practically admitted. He also pointed out that from the material on record as noticed by the Division Bench of the High Court it is clear that the management was always ready and willing to accept the workmen back to duty if they so choose to do so. Hence, the reference by the Government as held by the Division Bench of the High Court was uncalled for.

Having heard the learned counsel for the parties, we are of the considered opinion that the Division Bench of the High Court by the impugned order erred in coming to the conclusion that the reference made by the Government to the Labour Court is uncalled for. By this finding the High Court has pre-empted the case of the appellant-workmen as contended by the learned counsel for the workmen, it is clear that the dispute involved is founded on certain facts which are yet to be established before the Labour Court. If the management felt that the Labour Court has no jurisdiction to entertain the reference then it ought to have persuaded the said court to frame a preliminary issue and decide the same as held by the learned Single Judge. The management could not have straight away filed a writ petition challenging the reference.

This Court in the case of Management of Express Newspapers (Private) Ltd., Madras vs. The Workers and Ors. (AIR 1963 SC 569) has held in paragraph 15 :

"The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make is necessary to do so ? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastri's argument that the Appeal Court was wrong in reversing the conclusion of the trial J

udge in so far as the Trial Judge proceeded to deal with the question as to whether action of the appellant was a closure or a lockout ".

From the above, it is clear that it is not proper for the High Court to entertain a petition under Article 226 to pre-empt the Labour Court in deciding the issues arising before it pursuant to the reference made to it. Following the above judgment, we quash the impugned order of the Division Bench of the High Court and remit the matter back to the Labour Court. It is open to the parties to raise such plea as is available to them in law.

The appeals are allowed accordingly.

???????..J.
(N.Santosh Hegde)

New Delhi;???????..J.
January 25, 2005. (S.B.Sinha)