

\$~3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9586/2016 & CM Nos.38442-38443/2016

NATIONAL INSTITUTE OF PUBLIC CORPORATION & CHILD
DEVELOPMENT Petitioner

Through: Mr. A K Singla, Sr. Adv. with Mr. H
D Sharma, Adv.

Versus

UNION OF INDIA & ORS Respondent

Through: Mr. Sanjeev Narula, CGSC with Mr.
Kirtiman Singh, CGSC, Mr. Vinita
Sasidharan and Mr. Waize Ali Noor,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **03.11.2016**

The learned Senior Advocate for the petitioner submits that the security agency i.e. respondent No.3 engaged by the petitioner is deemed to have been exempted under the Contract Labour (Regulation and Abolition) Act, 1970 in view of the Private Security Agencies (Regulation) Act, 2005 which requires due clearance by such licensing agency under the Contract Labour (Regulation and Abolition) Act, 1970.

Furthermore, the office memoranda issued by the Ministry of Defence (Department of Ex-servicemen Welfare) also makes an encumbrance upon the security agency that it would acquire a license for the contract labour in accordance with the government order on the subject.

He submits that the reference of the industrial dispute was made upon a complaint by respondent No.4 for his employment by respondent No.3. Therefore, on the basis of pay, there is no employee - employer relationship between respondent No.3 and 4. He further submits that in view of the judgment of the Supreme Court in ***National Engineering Industries Ltd. v. State of Rajasthan AIR 2000 SC 469***, the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute.

The learned Senior Advocate further submits that the said workman respondent No.4 only worked for seven months and did not meet the requisite criteria, therefore, no industrial dispute could exist in the first case.

Apropos ***National Engineering*** (supra) Mr. Sanjeev Narula, Central Government Standing Counsel submits that all that the Central Government has to see is whether an industrial dispute exists. It is not for the Government to adjudicate upon the merits of the case. The adjudication of the industrial dispute would be done on the merits of the case by the Industrial Tribunal. He further submits that whether the workman was an employee of respondent No.3 or of the petitioner or whether he was to be regarded a workman under the Act would be determined only after due proceedings before the Industrial Tribunal. He relies upon the judgment of the Supreme Court in *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar AIR 1989 SC 1565* which reads as under :

11. *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 refer, 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.

12. *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.*

13. *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 quasijudicial 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, MANU/SC/0228/1985 : (1985)IILLJ187SC; M.P. Irrigation Kararnchari Sangh v. The State of M.P., MANU/SC/0221/1985 : (1985)ILLJ519SC; Shambhu Nath Goyal v. Bank of Baroda, Jullundur, MANU/SC/0283/1978 : (1978)ILLJ484SC.*

14. *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 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 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) of the Act nugatory.”

The aforesaid judgment has been relied upon in *Hongkong and Shanghai Banking Corporation Ltd. v. Govt. of India* [W.P.(C) No.12602/2006 decided by this Court on 24.09.2008].

In the light of the preceding submissions, the Court is of the view that whether respondent No.4 is an employee of respondent No.1 or 3 is a matter to be decided and adjudicated to the Tribunal. So far as the impugned reference indicates the conclusion that an industrial dispute exists the requirement of Section 10 is met. The adjudication of the reference would be required to be done by the industrial tribunal. The reliance upon ***National Engineering*** (supra) is inapposite because that case was in the context of a dispute regarding the terms of settlement between the management and the workmen. It is in that context that the Supreme Court had observed: that after reaching a settlement if there is a dispute as to whether a complete settlement has been arrived, the High Court could entertain the writ petition. The judgement was not in the context of Section

10 of the Act.

The aforesaid case is distinguishable on facts. In the circumstance, the writ petition is dismissed.

It will be open to the petitioner to raise the pleas on merits before the Industrial Tribunal. The Court has not expressed any opinion on the merits of the case.

NAJMI WAZIRI, J.

NOVEMBER 03, 2016/VLD