

(1992) 06 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 3537 of 1987

All India Bombay Tyres International Employees' Federation
and Others

APPELLANT

Vs

C.D. Dingare and others

RESPONDENT

Date of Decision : 24-06-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 12(4), 12(5), 12(6)

Citation : (1992) 3 BomCR 611 : (1993) 1 LLJ 346

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : P.S. Vardayya, for the Appellant; S.M. Dixit and P.K. Rele, for the Respondent

Judgement

1. There appears to be an impression in the minds of the Conciliation Officers in the State of Maharashtra that they are the ultimate arbitrators of industrial disputes. Large number of cases which have come before the Court, seem to indicate a pattern in the style of functioning of the authorities. It is expedient and highly desirable that they should be disabused of those erroneous impressions. Earlier the better.

2. The Petitioners-unions nurse grievances relating to domain of the Industrial Disputes Act. They are aggrieved that a substantial solution for such a dispute as envisaged under that imaginative social legislation, viz. a reference u/s 10, had not been made by the State Government and that the anterior preliminary steps to be undertaken by the Conciliation Officers, have remained unattended to, in view of a general impression, either by arrogance or by ignorance, resulting in incalculable harm to the weaker section of people in the society. It is agreed that the union had made demands and thereupon conciliation proceedings commenced in the matter. According to the Respondent No. 1-Conciliation Officer, he had 20 meetings to arrive at negotiated settlement. No settlement could be possible in the matter, as regards the petitioners-unions. According to

him, this was for the reasons "in the instant case, no clear cut demand was spelt out by the petitioners, although during the course of the discussions they were of course insisting all throughout that the lock-out under the Respondent No. 3 be lifted." In para 2 he admitted : "It is true that there were grievances between the employees and the Respondent No. 3 employer regarding revision of their wages, arrears of bonus, etc." According to him, the demands were not raised through correspondence. He conceded that the Respondent No. 4 Union had raised in black and white, demands at the management level but "it did not choose to raise them in conciliation before my office". A reading of the affidavit of that officer as a whole, clearly conveys an impression that he was at pains only to find out some excuse or other, for aiding the employers, which had been pressurizing the workers by a lock-out, possibly connived in that process by another union. This Court is not concerned at this stage with merits and demerits of the demands. When the industrial field is riven with trade union rivalry, workers are the worst sufferers. Those who wish to ride on the roulette wheel of the market, understandably, are likely to take advantage of the situation. As far as the Conciliation Officer is concerned, it has a solemn statutory duty, and that is only to conciliate. In most instances he may fail; he will not be blamed for that. A promptitude in his action is mandated by positive provisions of the Industrial Disputes Act, Section 12(6). He has to forward a failure report to the Government. The ball will then be in the Government's Court. Aided by the considerations which should weigh with it, in the exercise of the powers u/s 10, it is then the Government's duty to deal with the situation. The Parliament has deliberately, by a legislative device, prolonged the period of conciliation, by a fictional device, as it were. The despatch of a failure report by the Conciliation Officer would not terminate the conciliation proceedings. They will come to an end only when the report is received by the Government. That is the clear effect of Section 22 of the Industrial Disputes Act. This prolongation of the conciliation period is with a positive purpose, conceived in the larger interests of industrial peace. The Conciliation Officer has a power to prohibit a strike or lock-out depending upon the situation. In the present case it is a case of lock-out. That is certainly creating an inconvenience to an employer. The Conciliation Officer is unconcerned with the purse or privilege of the employer. If the situation demands it, he has to exercise that power. A pronounced attitude of favoring the employer brings disrepute to his office, and a crisis of confidence in his functioning. That is not in the larger interests of the public in general, or of the industrial segment, in particular.

3. In the present case, there are positive averments about Conciliation Officer having behaved in the manner had had done, due to extraneous consideration. Short of stating that he had received bribes, the unions have averred about his dancing to the tune of the employers. The graphic details of his behaviour as indicated in the ground "Q" would, prima facie, justify an inference of abnormal behaviour on the part of the Conciliation Officer. In para 8 of the rejoinder, there is a reference to "collusion between these officers, Respondent Nos, 1, 2, and 3

and also the various mala fide activities". The unions have also a case that in relation to the self-same issue, references had been made in all States in the Indian Union other than the State of Maharashtra. The fact that such references had been made in Karnataka and Madhya Pradesh and even adverse awards have been passed against the employers, had been admitted by the 3rd Respondent in its counter-affidavit. Here again, this Court is not concerned at this stage with correctness of the action taken by other State Governments in referring the disputes or of the awards passed in those disputes. The omission on the part of the Conciliation Officer to submit the failure report u/s 12, is extremely strange. It clearly amounts to an abdication of the statutory duty. The various grievances, concededly, had been before him in the course of the conciliation talks. There is no sanctity of a verbal repetition of such demands in his office when the 1st Respondent-Conciliation Officer admits that at any rate, 4th Respondent's Union had put their demands in black and white and that such demands were before him. I further direct the State Government to deal with the matter and take a decision u/s 10 of the Act, within an outer time limit of one month from the receipt of the report from the Conciliation Officer. The conciliation proceedings under the Industrial Disputes Act occupy a prominent place in the disputes resolving mechanism. A classic book on industrial jurisprudence, Law of Employment by G. B. Pai, succinctly gives the analysis of the section and functions of the Conciliation Officer, in paras 6.84 and 6.85 occurring in page 427. Every Conciliation Officer would do well to read them carefully. I extract them :

"6.84 Analysis of the section : The essence of the Industrial Disputes Act is the settlement of disputes and promotion of such settlement to progressively improve the conditions of employment in the country. In this the Conciliation Officer plays an important role and the duties prescribed under the Act are so fashioned. While the holding of conciliation proceedings in respect of an industrial dispute in a public utility service is mandatory, in the other industries the conciliation proceedings play an important role which is describe in the Act., "for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute."

If as a result of his endeavors, a fair settlement is arrived at, the Conciliation Officer shall send a report, enclosing a signed copy of the memorandum of settlement. If no settlement is arrived at, he should send a failure report. All this should be done within 14 days of the commencement of the conciliation proceedings.

On receipt of the failure report, if the Government is satisfied that there in a case for reference of the dispute for adjudication, it shall make a reference, otherwise, it shall record and communicate to the parties the reason why it is not making a reference."

The Supreme Court had indicated how a Conciliation Officer who does not make his report within 14 days may be guilty of breach of duty. See Andheri Marol

Kurla Bus Service and Another Vs. The State of Bombay, and State of Bihar v. K. S. Jaiswal 1961 I LLJ 234.

4. Even the Government functioning u/s 10 is not entitled to enter on an adjudication on merits of the disputes. The passages occurring in para 6.88 in the aforesaid book, are again apposite and with benefit could be extracted. Section 10 permits appropriate Government to determine whether dispute "exists or is apprehended" and then refer it for adjudication on merits. Reference is not adjudication which should be left to the tribunal to decide.

"However, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to the conclusion that the demands are either perverse or frivolous and do not merit a reference.... To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory." The passages contained above reflect the correct state of law."

5. It is not Section 12(5) that enables the Government to make the reference. That power is u/s 10. However, as pointed out in para 6.88 of the aforesaid book, "In deciding whether it should or should not make a reference u/s 10 read u/s 12(5) of the Act, the appropriate Government need not base its decision solely on the report of the Conciliation Officer..." It is understandable why he held the 20 meetings, if according to him, there was nothing in writing to form a basis of the conciliation talk. One of the demands was lifting of a lock-out, it is not for the Conciliation Officer to arrogantly assert that the management can declare a lock-out as it is a weapon in its armory, while fighting in the industrial warfare. Such Conciliation Officers are misfits to undertake the responsive and responsible duty under the Industrial Disputes Act.

6. The return of the Management, in the above context, makes interesting reading. It has stated that no report whatever had been sent by the Conciliation Officer u/s 12(4). This is put forward as a reason for not invoking the jurisdiction of this Court in this matter at this stage. In ground "B" of para 2 of its affidavit, it is averred : "In the instant case, it is an admitted position that the Conciliation Officer has not concluded the conciliation proceedings nor made any report as contemplated in Section 12(4). Consequently, in the absence of the Conciliation Officer's report, no question arises of the appropriate Government (Respondent No. 1) making any order of reference...."

7. As noted earlier, even according to the management, the 1st Respondent has not sent a report to the Government. What the unions demand is a reference. The Government can take a decision thereon normally on receipt of a report u/s 12(4) the demands raised by the union clearly spell out a dispute, an industrial dispute. Concededly, 20 meetings between the management and the representatives of the unions have not give any result. There is a failure, signal failure, in the conciliation proceedings. It is then a mandatory duty on the part of the 1st respondent to report that failure. His omission to do so is culpable, if not

motivated. He is bound to submit a report u/s 12(4). Herein he has failed without justification. He has to be compelled to discharge that duty peremptorily to preserve industrial peace, and incidentally to protect the interests of the weaker section of the society, the workmen in this establishment. I would compel this unwilling officer by a writ of mandamus to discharge the statutory duty u/s 12(4) of the Industrial Disputes Act. He shall forward to the Government, peremptorily, a failure report, within a week from this day.

8. I have deliberately restricted the time limit for his action. The officials of the Labour Department, and even those in Mantralaya, seem to have forgotten the provision of Section 12(4) of the Industrial Disputes Act which requires the Conciliation Officer to submit the report within 14 days of the commencement of the conciliation proceedings. The Legislative history in relation to that section would indicate that the Parliament is particular to preserve the mould of time limit prescribed thereunder. Initially, the time limit could be extended by mere agreement between the parties. Latterly, even if there is an agreement for extending the period as regards the parties, the consent of the Conciliation officer was also needed for that. In other words, when an effective attempt has been made to resolve a dispute, but settlement was not in sight, no purpose would be served in prolonging the conciliation period by the device of the parties agreeing to it. It would open to the Conciliation Officer to send the failure report to the Government, to ensure that there is a proper culmination of the conciliation proceedings. Only in the event of a good purpose being served, he need give a consent to the request of the parties for extension of the period of 14 days within which he had to send a failure report. What should have been done long back in 1987, is being compelled to be done now by this Court by invoking Article 227 of the Constitution. The situation does not brook a longer delay.

9. It is unfortunate that in a State known for its hectic industrial activities, there has not been an effective over-viewing of the functioning of the various Conciliation officers. On the basis of a direction issued in that behalf by the High Court of Kerala, the State of Kerala undertook such an evaluation in relation to the adequacy of the personnel in the Labour Department for a meaningful implementation of the Labour Laws. The State of Maharashtra would do well to undertake a similar work. The Labour Department does not appear to receive adequate attention by the Government. In turn, it does not appear to give adequate attention to the working of the various functionaries under the Labour Laws. The steel frame does not appear to have weighty books on its racks. The situation cries for immediate remedial action.

10. A Conciliation Officer should possess the necessary work culture for undertaking that strenuous course of peace making. When a precipitous situation arose in England, in a conflict between the Press and those working in that segment, it was a judge an experienced judge, Sir Normal Birkett, who carried on, untiringly, the conciliation proceedings. In his Autobiography he has

commented upon the delightful experience at the successful culmination of his efforts. He accepted the copy of a useful book as a memento of the appreciation expressed by the unions. The message which he has given is one which other Conciliation Officers would do well to care about and carry forward. The precious asset of the Conciliation Officer is patience, patience and patience.

11. The Central Government also has a duty, to review at least occasionally, the working of the various enactments, Industrial Disputes Act, 1947 included, and the working of Section 12 thereof, important as it is.