

(1965) 01 KL CK 0018
In the High Court Of Kerala
Case No : W. A. No. 22 of 1964

Alleppey District Small Scale Coir Manufacturers Association and Another APPELLANT

Vs

Travoncore Coir Factory Workers Union, Alleppey and Others RESPONDENT

Date of Decision : 12-01-1965

Acts Referred:

Constitution of India, 1950 — Article 136(1), 226
Industrial Disputes Act, 1947 — Section 10, 10A

Citation : (1965) KLJ 202

Hon'ble Judges : M. S. Menon, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : P. K. Kurien, K. A. Nayar and K. Sukumaran, for the Appellant;

Judgement

M. S. Menon C. J

1. This is an appeal by the petitioners against the dismissal of their petition, O. P. No. 1550 of 1962. The petition sought the quashing of Ext. P. 1, an award u/s 10A of the Industrial Disputes Act, 1947. The only controversy before us is as to the power of this Court to issue a writ or direction under Article 226 of the Constitution in respect of an award u/s 10A of the Industrial Disputes Act, 1947. It is common ground that if such a power does exist, this is a fit case in which the award should be set aside and the arbitrator directed to dispose of the matter afresh after giving the parties an opportunity to present their respective cases.

2. Section 10A is entitled, "Voluntary reference of disputes to arbitration", and reads as follows:

(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred u/s 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and

the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the Conciliation Officer and the appropriate Government shall, within fourteen days from the date of the receipt of such copy, publish the same in the Official Gazette.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(5) Nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section.

It is clear from the section that the initiation of the arbitration, at any rate, is consensual, and not compulsory- And in view of that Velu Pillai J. held in *A. T. K. M. Employees' Association v Masaliar Industries (Private) Ltd.* (1961 1 L. L. J. 81 = 1960 K. L. J. 1456) that Article 226 is not attracted to awards under that section. That decision was affirmed by a Division Bench of this Court in appeal, *A. T. K. M. Employees' Association v Musaliar Industries (Private) Ltd.* (1962 II L. L. J. 317 1962 K. L. J. 865).

4. The appellate decision said:

The heading to Section 10A is "Voluntary reference of disputes to arbitration", and there is no doubt that the word "voluntary" correctly sums up the nature of the reference under that section. The sole question for determination, therefore, is whether in the case of a reference which is voluntary, that is one made without compulsion or legal obligation, the arbitration will attract the jurisdiction of this Court to issue a writ of certiorari. The learned Judge came to the conclusion that it will not. We too are of the same opinion.

In (1953) Q. B. 704 Lord Goddard C. J.-adapting the words of Lord Sumner in a well known case-said that never during the many centuries that have passed since reports of the decisions of English courts first began, is there any trace of an arbitrator being controlled by this Court either by writ of prohibition or certiorari, and:

There is no instance of which I know in the books where certiorari or prohibition has gone to any arbitrator except a statutory arbitrator, and a statutory arbitrator is a person to whom by statute the parties must resort.

The arbitrator u/s 10A of the Act is not an arbitrator to whom by statute the parties must resort, and it must follow that no writ can be directed against him or his award.

We think it should be taken as settled law that today neither prohibition nor certiorari will issue to a body exercising a jurisdiction that is other than statutory. In other words, they will not issue to a private arbitral body which derives its jurisdiction from contract, or to a voluntary association which derives its jurisdiction from the consent of its members; (see Judicial Review of Administrative Action, by S. A. De Smith, p. 275)

4. As stated by Vaidialingam J. in *Koru v The Standard Tile and Clay Works* (I. L. R. 1963 (2) Kerala 132) the above decision cannot now be considered as embodying the law on the subject in view of the subsequent decision of the Supreme Court in *Engineering Mazdoor Sabha v Hind Cycles Ltd.* (1962 11 L. L. J. 760). In that decision the Supreme Court had to consider whether article 136 (1) of the Constitution can be invoked in respect of an award u/s 10A of the Industrial Disputes Act, 1947. The Supreme Court said that in order to attract article 136 (1) two conditions must be satisfied:

(i) the order should be of a judicial or quasi-judicial character, and

(ii) the order should be that of a court or tribunal; and held that in the case of an award u/s 10A of the Industrial Disputes Act, 1947, only the first of the two conditions is satisfied.

5. Incidentally the Supreme Court also dealt with Article 226 of the Constitution and its impact on an award u/s 10A of the Industrial Disputes Act, 1947. It said:

Article 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Art. 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of Courts or Tribunals. Under Art. 226(1) an appropriate writ, can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed u/s 10A is not a tribunal under Art. 136 in a proper case, a writ may lie against his award under Art. 226.

6. What is material to resolve the controversy before us is a clear understanding as to what is the character of the arbitration u/s 10A of the Industrial Disputes Act, 1947. The Supreme Court dealt with the matter as follows:

Having regard to several provisions contained in the Act and the rules framed thereunder, an arbitrator appointed u/s 10A cannot be treated to be exactly similar to a private arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The arbitrator u/s 10A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator as, in a loose sense, a statutory arbitrator.

In the light of the view expressed by the Supreme Court we must hold that a writ

or direction under Article 226 of the Constitution will lie against an award u/s 10A of the Industrial Disputes Act, 1947; and in the light of the facts and circumstances of this case that the award impugned should be set aside and the arbitrator (2nd respondent) should be directed to deal with the matter afresh after giving the parties an opportunity to present their respective cases. Judgment accordingly; but in the circumstances of the case without any order as to costs.