
(1968) 06 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 2205 of 1966

Antiseptic Employees Unit

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 17-06-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 19(2)
Payment of Bonus Act, 1965 — Section 34(1)

Citation : AIR 1970 Mad 145

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : G. Venkataraman, for the Appellant; T. Selvaraj, for Govt. Pleader, S. Swaminathan and K. Ramagopal, for the Respondent

Judgement

Kailasam, J.—This petition is filed by the Antiseptic Employees Unit, represented by the Tamilnad Press Workers Union, for the issue of a

writ of Mandamus, directing the State Government to refer the dispute relating to all the demands contained in the Order of the State Government

in G. O. Rt. 1306 dated 7-7-1966 for adjudication u/s 10 of the Industrial Disputes Act, The second respondent is a Journal represented by its

partner one Sri Vyasa Rao. The journal is English medical monthly with a circulation of 14,000 copies under the name and style of "Antiseptic".

Besides this, a monthly medical journal known as "Health" is also printed and published by the second respondent with a circulation of 3400

copies monthly. There are 13 clerical staff and about 22 workers employed by the Management. A settlement was arrived at between the

management of the Press on the one hand and the clerical staff and the workmen on the other on 27-3-1962, relating to service conditions of the

staff, dearness allowance, bonus and gratuity. The agreement provided that the staff and the labourers should be provided with 2 1/2 months bonus

a year. The agreement was to be in force for three years. The Madras Press Labour Union on 22-4-1965 made certain claims and the Tamilnad

Press Workers Union also came out with certain claims on 7-6-1965. On 13-8-1965, an agreement was reached by the Management with the

Madras Press Labour Union for two years regarding the annual increment, dearness allowance, bonus and gratuity. The petitioner Union was not a

party to this agreement. Regarding the claims made by the petitioner Union, a failure report was made on 20-1-1966, and the Government

declined to make a reference on 7-7-1966. Hence this writ petition is filed for a direction to refer the dispute for arbitration.

2. The impugned order is dated 7-7-1966. It relates to six demands. The petitioner Union confines its relief to demands 1 to 3 in this petition and

the other demands, therefore, need not be considered in this petition.

3. Demand (3) refers to payment of bonus. The reason given by the Government for not referring the dispute is stated as follows--

The bonus issue for the years 1962-63, 1963-64 and 1964-65 is covered by the settlement dated 27-3-1962 entered into by the Management

with the Madras Press Labour Union u/s 12(3) of the Industrial Disputes Act.

Mr. Dolia, the learned counsel for the petitioner submitted that the Bonus Ordinance was passed on 31-5-1965 and the payment of Bonus Act

came into force on 20-5-1985. Section 34(1) of the Act enacts that the provisions of the Act shall have effect notwithstanding anything inconsistent

contained in any other law for the time being in force and or in the terms of any award, agreement, settlement or contract of service made before

the 29th May 1965. If the Act is applicable, no agreement, settlement or contract of service made before 29th May 1965 can be relied on but the

provisions of the Act will have to be applied. Section 22 of the Act enacts that where any dispute arises between an employer and his employees

with respect to the bonus payable under this Act or with respect to the application of the Act to an establishment in public sector, then such dispute

shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act,

Section 3 of the Act provides that where an establishment consists of different

departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under the Act. The proviso states that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under the Act for that year, unless such department or undertaking or branch was immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus. The Government have declined to make a reference on the ground that the bonus issue is covered by the settlement dated 27-3-1962. As pointed out, Section 34(1) of the Payment of Bonus Act makes it clear that an agreement, settlement or contract of service made before 29th May 1965, will not be effective and the provisions of the Act will govern the issue relating to bonus, if the Act is applicable. The Government have not refused to refer the demand relating to payment of bonus on the ground that the Act is not applicable.

The question as to whether the Payment of Bonus Act, 1965 is applicable or not has to be considered with regard to the demand made by the petitioner Union. The reliance on the settlement deed dated 27-3-1962 is an obvious error. The order of the Government refusing to refer the demand for payment of bonus will have to be set aside and is accordingly set aside. The Government is directed to consider the question whether the Payment of Bonus Act, 1965 is applicable or not to the demand and decide the question as to whether a reference should be made or not.

4. Demand (1) relates to enhancement of dearness allowance, and demand (2) relates to revision of grades and wages scales. The Government declined to refer the demand for enhancement of dearness allowance on the ground that the management was prepared to pay the staff the same dearness allowance agreed to be paid under the settlement dated 13-8-1965 under Section 12(3) of the Act, entered into with the Madras Press Labour Union, and that that rate compared favourably with the rates in other presses. The Government declined to refer the demand for revision of

grades and wages scales on the ground that the existing grades and wages compared favourably with those in similar establishments. The law

relating to the power of the Government to make a reference has been laid down by the Supreme Court in *State of Madras Vs. C.P. Sarathy and*

Another, , The State of Bihar Vs. D.N. Ganguly and Others, and State of Bombay Vs. K.P. Krishnan and Others, , and by a Bench of this Court

in Government of Madras Vs. Workmen of South India, Saiva Siddhanta Works Publishing Society, . The above decisions were considered by

this Court in *Coimbatore District Textile Mills Staff Union (by Secretary) Vs. State of Madras (by Secretary to Government, Industries, Labour*

and Co-operative Department) and Another, and the position was summed up thus:

A consideration of the authorities cited above makes it clear that the High Court cannot sit as a Court of appeal on the order passed by the

Government. The Government in passing an order u/s 10(1) read with Section 12(5), is acting in an administrative character (capacity) and it has

the option to make a reference, or not to make a reference on the facts, taking into consideration the expediency in each case; the decision is for

the Government to take and not for the Courts to interfere. The Government will be justified in refusing to make a reference where the dispute is

inconsistent with the agreement between the parties. But the Court will be justified in issuing a writ of Mandamus if the Government did not act

bona fide or base its conclusions wholly on irrelevant or extraneous materials or materials which were not germane for deciding the question

whether a reference should be made or not.

5. Mr. Dolia, the learned counsel for the petitioner strongly relied on a decision of the Supreme Court in *Bombay Union of Journalists and Others*

Vs. The State of Bombay and Another, , where the Supreme Court held--

It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said

questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly on disputed questions of fact the

appropriate Government cannot purport to reach final conclusions, for that again would be the province of the industrial tribunal.

This passage is later explained by their Lordships as meaning that the

appropriate Government is not precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5) or not, and that it must be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10(1).

6. Mr. Dolia submitted that the order relating to demand (1) is unsustainable on two grounds, namely, that the staff had not consented to accept the dearness allowance as agreed to by the Labour Union and therefore the settlement dated 13-8-1965 is not binding on the labourers. The Government has said that the management was prepared to pay the staff the same dearness allowance agreed to be paid under the settlement dated 13-8-1965, and that that rate compared favourably with that in other presses. The statement that the rate compared favourably with the rates in other presses was vehemently challenged on the ground that there is no material on record to show that the Government compared the rates prevailing in other presses. I do not think this question can be gone into by this Court, for as observed by the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, , the Court could not canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as it was judicial or quasi-judicial determination. The Government has the discretion to make a reference or not. Considering the circumstances of the case there is no material for coming to the conclusion that the Government was not right in coming to the conclusion that the dearness allowance agreed to be paid compared favourably with the rates in other presses.

7. Regarding the second demand for revision of grades and wages scales also, the Government on a consideration of the facts have come to the conclusion that the existing grades and wages compared favourably with those in similar establishments. I do not think in the circumstances, the Court will be justified in examining the materials that were available before the Government for coming to the conclusion. Suffice it to say that there is no material to hold that the Government was in any way influenced by any extraneous material for coming to that conclusion. On these grounds, the order of the Government declining to refer demands 1 and 2 for arbitration

should be upheld.

8. Mr. Swaminathan, learned counsel for the respondent, submitted that the order of the Government should be upheld on legal grounds also. He

submitted that u/s 19(2) of the Industrial Disputes Act, 1947. a settlement arrived at shall be binding for such period as is agreed upon by the

parties and shall continue to be binding on the parties, after the expiry of the period aforesaid, until the expiry of two months from the date on

which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party to the settlement. On record,

there is no material for holding that any such notice as required u/s 19(2) of the Act was given to the management. In a recent decision of the

Supreme Court in Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, , it has been held that the

Tribunal had no jurisdiction to adjudicate upon any claim unless a notice u/s 19(2) had been given. The Court observed that when there is no

notice as required u/s 19(2), it would follow that there is a subsisting award binding on the parties and the Tribunal will have no jurisdiction to

consider the same in a reference.

Mr. Dolia. learned counsel for the petitioner, submitted that the decision will not be applicable to a case where the absence of notice u/s 19(2) was

not raised at the earliest point of time. I am unable to find any support for this contention in, the Judgment. As seen from the decision, it is clear that

if the agreement is not validly terminated u/s 19(2), it continues to be subsisting and binding on the parties. Learned counsel for the petitioner

submitted that the order of the Government cannot be sought to be supported on any ground not mentioned in the order itself, and therefore this

ground cannot be taken into account. Even accepting this contention I find that the order of the Government refusing to refer demands 1 and 2

cannot be interfered with. I am also of the view that as the failure to give notice u/s 19(2) of the Act, goes to the root of the matter, the order of the

Government can be supported on that ground also.

9. In the result the writ petition is allowed with regard to demand (3), namely, demand for payment of bonus. The Government will consider the

question whether the Payment of Bonus Act, 1965 is applicable or not and decide as to whether the demand should be referred to adjudication or

not, With regard to demands 1 and 2, the writ petition is dismissed; there will be no order as to costs.