
(1955) 07 GUJ CK 0001
In the Gujarat High Court

Associated Cement Company Ltd.

APPELLANT

Vs

N.L. Vyas and Others

RESPONDENT

Date of Decision : 14-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 11, 30, 38, 7

Citation : (1955) 2 LLJ 525

Hon'ble Judges : S.J. Chhatpar, J

Bench : Single Bench

Judgement

S.J. Chhatpar, J.—This application under Articles 226 and 227 of the Constitution of India against an order of the industrial tribunal, Rajkot, does not appear to be contested as none of the opponents have filed a return or put in appearance. The order impugned arises out of an industrial dispute referred by the Government of Saurashtra in exercise of powers under Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, by an order dated 6 October 1954, and the dispute related to payment of bonus for the year 1951-52 to the workers of the applicant who are the second opponents, represented by the Cement Kamdar Mandal, Porbandar. In pursuance of this reference, the secretary to the industrial tribunal issued a notice dated 11 October 1954 calling upon the mandal to file a statement of claim in connexion with the said dispute and to serve a copy of the same to the other side, viz., the applicant. In response to this notice the secretary to the mandal replied by letter to the industrial tribunal that the applicant company should supply information as per schedule attached thereto, with a request that they would file their statement of claim which they call "written statement", within fifteen days after the receipt of the information. The industrial tribunal, without hearing the applicant, passed an order on this letter in the following terms:--

Company shall supply the information as per schedule enclosed to this union within fifteen days under intimation to tribunal.... The union shall file written

statement fifteen days after the information is supplied by the company.

In pursuance of this order, a letter was written to the manager of the applicant company, dated 9 November 1954 calling upon the company to supply information required in the schedule which is reproduced below:--

"SCHEDULE"

1. Number of workmen (i) receiving salary less than Rs. 500, (ii) those receiving Rs. 500 employed by Cement Works, Associated Cement Company, Ltd., Porbandar, separately.
2. Average annual basic wage-bill of the employees at Porbandar receiving salary less than Rs. 500 and above Rs. 500, separately.
3. Total number of workers of the Associated Cement Company, Ltd., throughout India and Pakistan (i) receiving salary less than Rs. 500 and (ii) those receiving above Rs. 500 separately.
4. Average monthly basic wage-bill per item 3 separately.
5. Balance - sheets of the company for the years 1950-51 and 1951-52.
6. Whether the item of salaries and wages of Rs. 221-74 lakhs includes bonus paid in the year 1951-52 for previous years, and if so, the amount of the previous years' bonus paid.
7. Separate figures of the joint item of Rs. 11-03 lakhs for royalties and duties during the year 1951-52.
8. The separate amount of donations out of the item of general expenses at Rs 7-78 lakhs.
9. Detailed particulars above Rs. 1,000 of the item of "prospecting expenses" at Rs. 1.22 lakhs.
10. Income tax assessment orders for the years 1950-51 and 1951-52.

It is this order which is being impugned by the applicant.

2. Now Section 11(3) of the Industrial Disputes Act, 1947, reads:--

Every?tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit in respect of the following matters, namely,

(b) compelling the production of documents and material objects.

The relevant provisions of the CPC are contained in Section 30 and in order XI. Rule 21 of the Industrial Disputes Act framed by the Central Government in exercise of powers conferred by Section 38 of the Industrial Disputes Act says:--

Power of tribunals--in addition to the powers conferred by Sub-section (3) of Section 11 of the Act,... tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:--

(a) discovery and inspection;

The combined effect of Section 11(3) of the Industrial Disputes Act, 1947, and this Rule 21 is to vest in the industrial tribunal with respect to discovery, production and inspection of documents the same powers which the CPC places in the civil court when it tries civil suits. It is not an unlimited power but is necessarily to be guided by the rules of order XI of the CPC and the established principles of law relating to discovery. In the present case, the second opponents who are making the claim for bonus to the extent of 50 per cent of their total basic wages for the year 1951-52 are in the position of a plaintiff; a plaintiff cannot call upon a defendant to furnish information to him to make out a case to be presented in the plaint. It is only when the plaintiff files his plaint that the question of discovery arises. In the present case, the industrial tribunal has passed an order ex parte and without having a statement of claim before it and has passed this order to enable the plaintiffs to prepare their statement of claim which is not authorized by the Civil Procedure Code. The order of the industrial tribunal was an illegal exercise of jurisdiction, if not without jurisdiction altogether. The Madras High Court in an application for a writ under Article 226 of the Constitution which referred to an industrial dispute between Mettur Chemical and Industrial Corporation Ltd. Vs. Their Workers, has elaborately dealt with the question of discovery under consideration and have discussed various provisions of the CPC and the Industrial Disputes Act and the rules framed there under. At p. 32, Rajagopalan, J., observed:

The ambit of the power of an industrial tribunal to order inspection of documents is no larger than that of a civil court. Section 11(3) of the Industrial Disputes Act, 1947, and Rule 21 already adverted to make that clear.

It is with reference to these principles I have to decide whether the order of the industrial tribunal, dated 8 July 1955, was within its jurisdiction.

The accounts of the management, inspection of which by the workers' union was ordered by the industrial tribunal were those showing (i) profits, (ii) depreciation, (iii) management expenses, (iv) packing and transport charges, (v) consumption of raw materials, (vi) salaries and (vii) commission. Of these with reference to items (iii), (iv) and (v) the management had filed abstracts of accounts and these and the accounts of which they were abstracts could possibly be held to fall within the scope of Rule 15 and Clause (1) of Rule 18 of order XI, Civil Procedure Code. Inspection of the other documents could have been claimed by the workers' union and allowed by the industrial tribunal only under the terms of Clause (2) of Rule 18 of Order XI, Civil Procedure Code. No doubt the sufficiency

of reasons if given by a subordinate tribunal will not be a matter for investigation by this Court in proceedings under Article 226 of the constitution. Nor can the failure of a subordinate tribunal to furnish reason by itself be sufficient in all cases to set aside the order of that subordinate tribunal. In the case of an industrial tribunal, however, it is certainly not unreasonable to expect a considered judicial order of "speaking order when a right is claimed and allowed despite the objections of the other party. It has now been authoritatively laid down by the Supreme Court that though an industrial tribunal is a quasi-judicial tribunal the functions it discharges are judicial functions. The strictly circumscribed standards of scrutiny which the court exercising revisional jurisdiction could apply to the judicial order of a civil court, could well apply to a judicial order of an industrial tribunal, when the jurisdiction of this Court is invoked either under Article 226 or under Article 227 of the Constitution. As I have already stated, there is nothing *ex facie* the order of the industrial tribunal to indicate that the tribunal was conscious that it was called upon to exercise a jurisdiction controlled by the principles embodied in Clause (2) of Rule 18 of order XI, Civil Procedure Code.

And at p. 33, the learned Judge further observed:

In my view, the industrial tribunal erroneously assumed a jurisdiction and exercised a power in excess of that conferred on it by Section 11(3) of the Industrial Disputes Act, 1947, and by Rule 21 of the rules framed there under when it ordered inspection of accounts of the management. That could fall only within the scope of Sub-clause (2) of Rule 18 of order XI, Civil Procedure Code, before the workers' union had established its right to inspect those accounts.

Whether on that ground the order of the industrial tribunal, dated 8 July 1954, should be set aside by the issue of a writ of certiorari is the next question. *Mahabaleswarappa v. Ramdchandra Rao* ILR 1937 Mad. 132 should suffice to answer that question in the affirmative. In the words of Venkateshwara Rao, J., at p. 143: The disregard of law is so flagrant that it amounts to usurpation declining or abuse of jurisdiction.

The learned Judge allowed the application for a writ and set aside the order of discovery and inspection. I fully agree with the interpretation of the provisions of the Industrial Disputes Act, the rules framed there under and the Civil Procedure Code, relating to discovery, production and inspection of documents contained in Section 30 and order XI of the Civil Procedure Code. The learned Judge came to the conclusion that the order passed was without jurisdiction, though I am inclined to think that it would be more appropriate to hold that the order was passed illegally in the exercise of jurisdiction, being not only passed *ex parte* in an important matter but in utter disregard of the provisions of order XI, CPC and the established principles of law governing discovery, and bring the case within the recent decision of the Supreme Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , wherein their lordships of the Supreme Court, after an exhaustive review of the authorities dealing with the ambit and features of a writ

of certiorari, laid down conditions under which a writ could lie. At p. 243 of the report, their lordships enunciate the following propositions as settled:--

(1) "Certiorari" will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) "Certiorari" will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of "certiorari" acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to re-hear the case on the evidence, and substitute its own findings in "certiorari."

Earlier decisions of the Supreme Court on the subject are to be found in T.C. Basappa Vs. T. Nagappa and Another, and in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, . The mere fact that an alternative remedy by way of an appeal is available to the applicant is no ground in all cases of refusing a writ of certiorari. But in the present case the order under consideration does not seem to be appealable under the Industrial Disputes Act. This has been so held by the Labour Appellate Tribunal of India (in Calcutta) in a dispute between the United Commercial Bank and the United Commercial Bank Employees' Association wherein the tribunal held that an order directing production and inspection of document passed in the course of adjudication proceedings must be held to be not a "decision" within the meaning of Section 7 of the Industrial Disputes (Appellate Tribunal) Act and hence an appeal against such an order must be held to be incompetent. See 1954 II L.L.J. 194. So the applicant had no alternative remedy by way of an appeal to the Appellate Tribunal. Under the circumstances, I set aside the order passed by the industrial tribunal calling upon the applicant to furnish the information to the second opponents. As the applicant has not claimed costs, there would be no order as to costs.