

(1962) 07 KL CK 0007
In the High Court Of Kerala

A.T.K.M. Employees" Association

APPELLANT

Vs

Musaliar Industries (Private) Ltd. and Another

RESPONDENT

Date of Decision : 20-07-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10A, 17, 17A, 19

Citation : (1962) 2 LLJ 317

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

Bench : Division Bench

Judgement

M.S. Menon, C.J.—This is an appeal by the petitioner in O.P. No. 156 of 1959 against the dismissal of that petition. The petition invoked Article 226 of the Constitution and prayed for a writ of certiorari against an award u/s 10A of the Industrial Disputes Act, 1947. The prayer was rejected by Velu Pillal, J., in the Judgment under appeal 1961 I L.L.J. 81 on the preliminary ground that a writ of certiorari is not competent against an award under that section.

2. Section 10A which was inserted by Act XXXVI of 1956 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 (X of 1940), shall apply to arbitrations under this section.

3. Section 17 of the Act provides for the publication of the award within a period of thirty days from the date of its receipt by the appropriate Government and Section 17A that it will become enforceable on the expiry of thirty days from the date of its publication u/s 17. u/s 19 the award will remain in operation--subject to the provisions of that section--for a period of one year from the date on which it became enforceable u/s 17A of the Act.

4. 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.

5. 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.

6. 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.

7. 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.]

8. There are statutes which make arbitration compulsory for the settlement of disputes. For example, Section 16(1) of the (English) Agricultural Holdings Act, 1923, provided that any question or difference in respect of the matters specified in that section shall be determined by a single arbitrator in accordance with the

provisions set out in Schedule II to that Act. A writ will certainly lie in such a case, and it was so held in (1925) 94 L.J.K.B. 433.

9. Our attention was drawn to Air Corporations Employees' Union and Another Vs. D.C. Vyas and Others, which contains a discussion of the judgment under appeal. We are unable to find anything in that judgment which compels or induces a conclusion different from that of Velu Pillal, J.

10. In the light of what is stated above, this appeal has to be dismissed and we do so. In the circumstances of the case, however, there will be no order as to costs.