

**(1960) 08 KL CK 0018**  
**In the High Court Of Kerala**

A.T.K.M. Employees" Association

APPELLANT

Vs

Musaliar Industries (Private), Ltd. and Another

RESPONDENT

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**Date of Decision :** 30-08-1960

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 10A, 2

**Citation :** (1961) 1 LLJ 81

**Hon'ble Judges :** S. Velu Pillai, J

**Bench :** Single Bench

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## Judgement

S. Velu Pillai, J.—An industrial dispute between the managements of several concerns and their employees, was referred for adjudication, under the industrial Disputes Act, 1947, hereinafter referred to as the "Act," to the industrial Tribunal, Trivandrum. One of the matters so referred, was the fixation of scales of pay and of dearness allowance for the employees. The tribunal passed an award, which is marked Ex. P. 1, allowing increments over the salary or wages which they were receiving "at present" and settling a formula based on "the present" salary or wages, for fixing the total salary and allowance in each case. It will be observed, that the salary and allowances were related to the " present" salary or wages, a word which gave rise to different interpretations. It would appear, that one of the managements, A. Thangal Kunju Musaliar & Sons, Ltd., Quilon, the first party before the tribunal, had stopped their business in that name in August 1956, but may be taken to have resumed business in April 1957 in the name of Musaliar industries (Private), Ltd., Qnilon, impleaded as the respondent 1 in this petition. During the pendency of the adjudication proceedings the respondent 1 had already granted an increment of 10 per cent in the salary of each of their employees. In implementing Ex. P. 1, there arose a controversy between the respondent 1 and the employees, as to whether the increment in the salary sanctioned by Ex. P. 1, ought to be upon the basis of the original salary before increment or upon the salary after increment, by 10 per cent. The respondent 1 and the workmen agreed to refer this matter to arbitration, pursuant to Section 10A of the Act which reads as follows:

10A (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 of Boer 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.

As provided by Sub-section (2) above, an arbitration agreement, Ex. P. 2, in form C, prescribed by the Kerala Industrial Disputes Rules, 1957, was drawn up and signed by the representative of the respondent 1 and of their employees, specifying the matter in dispute as,

the interpretation and mode of enforcement of the award (Ex. P. 1) in I.D. No. 46 of 1956 of the Industrial Tribunal, Trivandrum, in respect of the establishment of Musaliar Industries (Private), Ltd.; and their staff with reference to the 10 per cent increment received by the staff from April 1957 over the salaries they were receiving from Thangal Kunju Moolali & Sons, Ltd., Quilon.

They also agreed, that the arbitrator must be "a person who has been a Judge of the High Court to be nominated by Government." Sri R. Sankaranarayana Ayyar, the respondent 2, who had been a Judge of the High Court of Travancore, was nominated by Government as arbitrator and he has passed the arbitration award, Ex. P. 3, now impugned before me. By Ex. P. 3, the arbitrator has decided that the salary should be related to original salary, before it was increased by the 10 per cent. Aggrieved by this, the association of employees has moved this petition to quash Ex. P. 3. Exhibit P. 3 was attacked on three grounds, first, that it was made after the expiry of a period of one month stipulated by the parties for making it, secondly, that there was no industrial dispute within the meaning of Section 10A and therefore the reference to arbitration was incompetent, and thirdly, that it is vitiated by errors of law apparent on the face of the record. A preliminary objection was taken on behalf of the respondent 1, that the respondent 2 is not a statutory arbitrator, and therefore no certiorari or

prohibition could issue to him. I am of the view that this preliminary objection has to prevail. In *R. v. Disputes Committee of Dental Technicians* 1953 I All E.R. 327 Lord Goddard, C.J., obagrvd:

I have never heard of certiorari or prohibition going to an arbitrator. Arbitration is a very old remedy in English law, but in all the centuries that have passed since the decisions of English Courts first began there is no trace of an arbitrator being controlled by this Court by writ of either prohibition or certiorari...It would be an enormous departure from the law relating to prerogative writs if we were to apply these remedies to an ordinary arbitrator, whether he be a single arbitrator or a body of gentlemen called a committee or council, and I am of opinion that we must dismiss these applications on the ground that they are wholly misconceived.

The other Lord Justices agreed. Such writs may, however, issue to a statutory arbitrator. As defined by the Lord Chief Justice, he is "a person to whom, by statute, the parties must resort." He is a statutory person

on whom Parliament has conferred statutory powers and duties, the exercise of which may lead to the detriment of subjects as, for instance,...an arbitrator set up by Parliament to assess the compensation....

The principle is that in the case of statutory arbitrators

Courts should be able to control the exercise of statutory jurisdiction within the limits imposed by Parliament.

but not so, of an arbitrator of the parties' choice.

3. If the respondent 2 is not a statutory arbitrator, I see no escape for the petitioner, from the dictum of the learned Chief Justice. Counsel for the petitioner contended that the respondent 2 having been appointed pursuant to Section 10A of the Act is a statutory arbitrator; I cannot agree. Section 10A of the Act stipulates the following among others;

- (i) an industrial dispute must exist or is apprehended,
- (ii) the employer and the workmen may agree to refer the dispute to arbitration and if so, by a written agreement, to be drawn up as prescribed, and
- (iii) the reference shall be to such person or persons as may be specified in the agreement.

Thus the arbitration itself, and the choice of the arbitrator, are left to the will of the parties. An arbitrator so appointed does not fulfil any of the characteristics of a statutory arbitrator, as laid down by Lord Goddard, C.J. As observed by Croom-Johnson, L. J., in the same case, in this case too, the arbitration is directed by agreement, is not to a public body, the authority of the arbitrator does not depend on any statutory jurisdiction, and he is a private tribunal set up as arbitrator by agreement. Section 10A(1) is but a provision, which enables parties

to refer their disputes, if they want, to an arbitrator of their choice. So too the Arbitration Act, 1940, enables parties to refer disputes to arbitration. There are provisions in that Act which regulate and govern arbitration proceedings, but for that reason alone, an arbitrator nominated by the parties cannot be considered to be a statutory arbitrator within the scope of Lord Goddard's definition. The award under the Arbitration Act, 1940, is made enforceable by a special procedure, so too is the arbitration award u/s 10A, but this is only as part of the law of arbitration, as codified by the two statutes. No doubt the arbitrator's name was not mentioned in the arbitration agreement, and the parties agreed that a person who has been a Judge of the High Court may be chosen, and left the choice of the individual to Government; this does not alter the position. I therefore come to the conclusion that the respondent 2 was not a statutory arbitrator.

4. The learned Counsel for the respondent 1 placed reliance on the judgment of a Division Bench of this Court in Original Petitions Nos. 455, 501 and 574 of 1958, and contended for the position, that whenever an award under the industrial Disputes Act is based on agreement of parties, the tribunal or authority making the award, is in the position of a domestic tribunal, to whom prohibition and certiorari will not go. In the case before the Division Bench, an award was passed on a reference u/s 10 of the Act, in terms of an agreement arrived at between the parties. On the authority of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, at 640 it was ruled by the Bench, that notwithstanding the absence of a specific provision in the Act, the industrial tribunal was competent to pass an award in terms of the agreement. Pursuant to one of the terms and conditions of the agreement upon which the award was based, a labour officer furnished a report. The reporting by the labour officer was held to be an act of the domestic tribunal, but the learned Counsel went further and relying on the following observations of the Division Bench:

It is equally clear that the basis, on which such an award binds, would not be adjudication by an authority, properly vested with powers, but the consent of the parties, so that should the award direct further steps, those would also rest on consent. Therefore, the compromise directing somebody and the latter doing some thing would become acts of a domestic tribunal.

Contended, that even the industrial tribunal was held to have acted as a domestic tribunal, because it rested the award on consent of parties. I do not agree that the above extract is capable of this inference. I see nothing in the judgment in *State of Bihar v. Ganguli* 1958 I L.L. J. 634 (supra) to lead me to think that the Supreme Court treated the award based on consent, as anything else than an award passed by an industrial tribunal functioning under the Act. However, apart from this, I am satisfied that the respondent 2 was not a statutory arbitrator.

5. It may also be considered, whether there was jurisdiction for a reference u/s 10A. There is no doubt that the petitioner, as also the respondent 1, were

consenting parties to the arbitration agreement; but mere consent cannot confer jurisdiction. An interpretation of a clause in the arbitration award is not per se equivalent to an industrial dispute; but if, on account of differing interpretations, an industrial dispute exists or is apprehended, Section 10A comes into play. The possibility, that a controversy between the parties as to the true interpretation of the arbitration award and the mode of implementing it, may give rise to an industrial dispute or give room for the apprehension, that an industrial dispute may arise, cannot be excluded. A dispute relating to the scales of pay, and to dearness allowance, and to the mode of enforcement, is a dispute relating to the "terms of employment or the conditions of labour" within the meaning of Section 2(k) of the Act. It is therefore clear that the arbitration agreement cannot be challenged for want of jurisdiction.

6. In this view, it is unnecessary to consider the other points raised on the merits of the case. The petition is therefore dismissed, but without costs.