

(1958) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 316 of 1955

Birla Cotton Spinning and Weaving Mills Ltd.

APPELLANT

Vs

Additional Industrial Tribunal and Others

RESPONDENT

Date of Decision : 17-03-1958

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 239(1), 246(4), 367
Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 — Section 33
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 16
Industrial Disputes Act, 1947 — Section 10, 12(5), 19, 2, 6

Citation : AIR 1960 P&H 76 : (1963) 1 ILR (P&H) 1

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Judgement

(1) This is a petition under Art. 226 of the Constitution by Birla Cotton Spinning and Weaving Mills Limited (to be hereinafter referred to as the Birla Mills) and the respondents to the petition are the Additional Industrial Tribunal of Delhi, the Delhi State, and the Workers of the Birla Mills, respectively Nos. 1 to 3. The petition has arisen out of the award, dated 25-6-1955, of Additional Industrial Tribunal of Delhi on a dispute arising between the petitioner and its workers.

(2) An industrial dispute having arisen between the petitioner and respondent No. 3, it came before the Conciliation Officer, and in consequence of his report the Chief Commissioner of Delhi proceeded to make reference of the dispute under Ss. 12(5) and 10 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), by a notification of 27-10-1953. The notification states that the Chief Commissioner was satisfied on the report of the Conciliation Officer that an industrial dispute between the parties existed. At the end of the order it is signed by the Secretary to the Delhi State Government and it stated "By Order".

It appears that subsequently respondent No. 3 applied to the Government for correction or rather amendment of some of the terms of the reference on the allegation that they were vague. Consequently an amendment of the original

notification (annexure "A") about the reference was issued by another notification (annexure "B") of 22-4-1954. In the second notification there is no reference to the Chief Commissioner of Delhi but the notification is under the signatures of an Under Secretary to the Delhi State Government signed "By Order".

It is not necessary to refer to the terms of reference in the dispute because I will show later on that the dispute at this stage has narrowed down to the case of 26 mechanical workers only as regards the fixation of their wages by the award of the Additional Industrial Tribunal. The award was made on 25-6-1955. The Birla Mills appealed against the award to the Industrial Appellate Tribunal on 23-7-1955 and in the same month respondent No. 3 also filed an appeal against the award to the same Appellate Tribunal. It appears that the Industrial Appellate Tribunal refused an application on behalf of the Birla Mills staying the award. Thereupon the Birla Mills filed the present petition on 6-9-1955.

(3) In the petition the petitioner has impugned the vires of S. 10 of Act No. XIV of 1947 and it has also attacked the validity of the notifications, annexures A and B., on the grounds (a) that the same were not issued by the authority having jurisdiction, (b) that the notifications are signed by an authority which is not the appropriate Government within the scope of S. 2(a)(i) or the State Government within the scope of S. 2(a)(ii) of Act No. XIV of 1947, and (c), that the notifications were not issued in the name of the President and that the same could not be issued in the name of the Chief Commissioner.

Apart from this award itself was challenged on various grounds on merits and the grounds that is at this stage material is that in so far as the 26 mechanical workers are concerned it awards wages to them in excess of their demand and to that extent is without jurisdiction. There are various other details given in the petition attacking the award on merits but it is not necessary to state them here.

(4) The respondents have filed replies and affidavits and they have controverted all the allegations on the side of the petitioner.

(5) While the petition has been pending in this Court the Industrial Appellate Tribunal gave its decision on 26-6-1956 and that was published in the Government of India Gazette of 5-7-1956. According to S. 16 of the Industrial Disputes (Appellate Tribunal) Act (XLVIII) of 1950 the effect of the decision of the Appellate Tribunal is to supersede the award of the Industrial Tribunal and it has the effect for all purposes in the same manner and in accordance with the same law under which the award or decision of the Industrial Tribunal was made as if the industrial tribunal made the award or decision as modified by the decision of the Appellate Tribunal. In giving its decision the Industrial Appellate Tribunal has modified in certain respects, the award of the Additional Industrial Tribunal, and again it is not necessary to go into the details of those modifications.

(6) After giving decision, the Industrial Appellate Tribunal was abolished by the

repeal of Act No. XLVIII of 1950 by S. 33 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act of 1956 (Act No. XXXVI of 1956). This was on 28-8-1956.

(7) It is said that the petitioner filed a writ petition in the Allahabad High Court against the appellate order of the Industrial Appellate Tribunal but that was dismissed on the ground of want of jurisdiction. The present petition remained pending in his Court. It came up for hearing a few weeks back, and for one reason or other it has had to be postponed for hearing, one of the main reasons being that it was not known where the records of the defunct Industrial Appellate Tribunal were and the notifications in relation to that Tribunal were also not available. The letter of the Chairman of the defunct Industrial Appellate Tribunal to the Director of Industries and Labour, Delhi Administration (annexure "C") of 15-11-1958 has been filed and it shows that after the abolition of the Industrial Appellate Tribunal the records of that Appellate Tribunal are not at Delhi, but are possibly either at Calcutta or at Bombay.

Notification No. LRI-9(7)/54, dated 24-4-1954 was issued by the Government of India under S. 6 of Act No. XLVIII of 1950 whereunder the principal seat of the Industrial Appellate Tribunal was set up at Bombay. On 6-4-1956 the Chairman of that Appellate Tribunal issued a notification under S. 8 (3) of the same Act constituting a Bench of that Tribunal to hear appeals at New Delhi as and from 16-4-1956. It is a fact admitted by both sides that the appeals against the award of the Additional Industrial Tribunal were in fact heard by the Appellate Tribunal at Delhi.

(8) According to the averments in the petition the award concerned 300 workers of the petitioner and in reply of respondent No. 3 it is stated that it concerned about 250 workers. It has been admitted at the hearing of this petition that, in spite of the stay of the award obtained from this Court, during the pendency of this petition, the award, as modified in appeal, has in fact been implemented except with regard to 25 mechanical workers only. The petitioner cannot possibly now go back upon that implementation and even on merits its case deserves no consideration it having substantially implemented the award. But it is open to the petitioner to accept a major part of the award and still to continue this litigation in certain circumstances and one such circumstance that is pressed by the learned counsel on behalf of the petitioner is that the award in so far as it relates to 26 mechanical workers is in excess of their demand and that being so the petitioner has in arguments pressed all the legal arguments in the case.

(9) I will first take the question whether or not the award is in excess of the demand of the workers in so far as the 26 mechanical workers are concerned. It is not denied that the award as it is within the scope of the reference made, but even so the learned counsel for the petitioner has said that it cannot possibly go beyond the cope of the dispute between the parties and consequently beyond the demand of the workers. It is said that the workers only demanded wages according to the Second Bombay Standardisation Award and in fact what has

been awarded to the 26 mechanical workers is much more than that Bombay Award.

It has been stated during the hearing on behalf of respondent No. 3 that what has been awarded to those 26 mechanical workers is less than what is being paid to similar workers by the Delhi Cloth and General Mills Limited. The correctness of this position has not been accepted on behalf of the petitioner. It is said on behalf of the petitioner that at one stage in the award the Additional Industrial Tribunal says that it was going to give wages less to respondent No. 3 as compared to the Second Bombay Standardisation Award and yet then it actually came to fix wages of 26 mechanical workers it did so even above than what would be due to them under the Second Bombay Standardisation Award.

The figures are, from the point of view of the petitioner, given in annexures L and M. and if those figures are correct it certainly means that those 26 mechanical workers have been given more than to what they would be entitled under the Second Bombay Standardisation Award. The decision of the Industrial Appellate Tribunal has been seen and it appears that this question, in the shape in which it is being now urged, was never placed before that Tribunal. The learned counsel for the petitioner says that if the fact is that what the Additional Industrial Tribunal has awarded to those 26 mechanical workers is more than they demanded, what is awarded in excess affects the jurisdiction of the Additional Industrial Tribunal to so award.

Assuming for the moment that the argument does raise a question of jurisdiction of that Tribunal, it proceeds on the assumption of the correctness of a fact. But the respondents do not admit the correctness of this fact. The position taken on behalf of the respondents is quite simple, and that is, that the Second Bombay Standardisation Award decides a matter of principle, in that it says that in the different categories of workers each worker will move from his present grade into the next grade. The grades are fixed by the industry. In the present case also the categories are there and so also in each category are the grades.

The Additional Industrial Tribunal has following the Second Bombay Standardisation Award, said that the workers--this is in particular reference to the 26 mechanical workers--will move from the grades in which they were in their own category to the next grade. So far there is no difference between the two awards. But what the learned counsel for the petitioner points out is that the effect of what has been said by the Additional Industrial Tribunal is to give to the 26 mechanical workers more wages than are being given to similar workers under the Second Bombay Standardisation Award.

It has already been said that is a question of fact and a fact which is not admitted as correct. It also appears to be a somewhat after-thought because the appeal before the Industrial Appellate Tribunal was filed by the petitioner before the petition in this Court and it appears from the decision of the Industrial Appellate Tribunal that this question was not raised in the way in which it is being

now raised. Atleast in its decision the matter has not been dealt with in the manner in which it has been raised here. In the circumstances this contention on behalf of the petition fails.

(10) It will be seen that the award even with regard to the 26 mechanical workers cannot be interfered with on merits. That disposes of the whole of the award and there is really nothing further left for consideration. This is sufficient for dismissal of the petition.

(11) However, I will briefly note what are the technical arguments urged on behalf of the petitioner in this petition. The first question that requires consideration is whether the petition as such is still competent? The award of the Additional Industrial Tribunal has been, under a statutory provision, superseded by the decision of the Industrial Appellate Tribunal. It was open to the petitioner to go to the Supreme Court by way of an application for special leave to appeal from that decision and probably, if there was substance in what is urged on behalf of the petitioner, that would have been a more appropriate remedy.

But after the decision of the Industrial Appellate Tribunal the petition continued pending for nearly eighteen months and no move was made on behalf of the petitioner to apply for amendment of the petition challenging the decision of the Industrial Appellate Tribunal. It has already been stated that this case necessitated a few adjournments because some of the notifications could not be found earlier and it took some time to find out where the records of the Industrial Appellate Tribunal were being kept. It was after a few hearings in this Court that an application was made on 11-1-1958 seeking an amendment of the original petition and an addition of a prayer that the decision of the Appellate Industrial Tribunal be also quashed.

It is true that it is open to this Court to allow an amendment, having regard to the peculiar circumstances of a particular case even after delay, but in the matter of exercise of discretion in this respect, the Court must have at least some circumstances before it which tend to justify the reason for not applying for amendment in proper time. No particular reason here is forthcoming why the amendment was not applied for soon after the decision of the Appellate Industrial Tribunal. This alone is sufficient for the rejection of the amendment application.

But the learned counsel for the petition rightly points out that, even in spite of the decision of the Appellate Industrial Tribunal, the original petition is still not liable to dismissal because it attacks the very foundation on which the structure of the proceedings in that dispute has been built and if according to him, he succeeds in pulling down the foundation then the award as also the appellate decision falls through, I think this is substantially a correct position. I therefore proceed to consider the legal objections of the learned counsel.

(12) The first objection and the main and substantial ground in the petition is really challenging the vires of S. 10 of the Act No. XIV of 1947. The learned

counsel says that the section contravenes Art. 14 of the Constitution because (a) it is discriminatory in giving unfettered power to the Government to select cases for reference and (b) no principles have been laid down for the Government in selecting cases as it will refer to the Industrial Tribunal as against cases that it will not so refer. But this is a matter now settled by their Lordships of the Supreme Court in *Niemia Textile Finishing Mills Ltd. v. 2nd Punjab Tribunal* (S) AIR 1957 SC 329 and it has been held that S. 10 of Act No. XIV of 1947 is not bad being in conflict with Art. 14 of the Constitution.

(13) The other question raised by the learned counsel for the petitioner is that there was a previous award of 26-5-1951 by the Industrial Tribunal of Delhi and as that award still continues under S. 19 of Act No. XIV of 1947 the present dispute covering the same field, is barred under the principles of *res judicata*. Reliance in this behalf is placed on *Burn and Co., Calcutta Vs. Their Employees*, which supports the position taken by the learned counsel assuming that the facts stated are correct. What turns out after seeing the award, dated 26-5-1951 of the Industrial Tribunal of Delhi is that the question how the wages were to be standardised was before the then Industrial Tribunal, but instead of it going into the matter and making the award in this respect, it directed the parties "that the Birla Cotton Spinning and Weaving Mills, Delhi, should forthwith adopt a scheme of standardisation of wages and revise the wages of all categories of workers in accordance with that scheme, taking the Bombay Scheme as a working mode. The management should work out such a scheme in consultation with the representatives of the worked and in case any dispute regarding the fixation of categories or wages cannot be resolved by mutual discussion such a dispute may be brought to this Tribunal in the form of a reference."

It is admitted on both sides that after this the Birla Mills and its workers actually agreed to a scheme for standardisation of wages and an agreement was signed between the parties. What the learned counsel for the petitioner contends is that the agreement should be read as if incorporated in the award of the Industrial Tribunal.

And I think this is even much more than overstating the case. It cannot be read as part of the award and although made pursuant to a direction of the Industrial Tribunal, it still remains an agreement between the parties. So there is on this aspect of the case no previous award the consideration of which bars a part of the present reference having regard to the principles of *res judicata*.

(14) This brings me to the last and the main argument on behalf of the petitioner. That argument attacks the validity of the order of reference, both the original and the amendment, on the ground that the same were made by an authority which had no power under the law to do so. The original order is annexure "A". It states that the Chief Commissioner of Delhi made the order referring the dispute to the Additional Industrial Tribunal. The order is signed in this manner:

"By Order-Secretary to the Delhi State Government".

The amendment annexure "B" makes reference to the original order and is again issued in the same manner but this time under the signatures of an Under Secretary to the Government. It does not make reference to the Chief Commissioner. The learned counsel for the petitioner points out that if the Chief Commissioner of Delhi has power under Act No. XIV of 1947 to make such a reference then the reference should have been under his order and not by somebody else signing "By Order". On the side of the respondents reference is made to *The State of Bombay Vs. Purushottam Jog Naik*, in which the order of the Bombay Government was signed--"By order of the Governor of Bombay"--by a Secretary to that Government and the High Court of Bombay held that was not compliance with the law as the order had not been issued in the name of the Governor of Bombay or by him.

Their Lordships of the Supreme Court held that was substantial compliance with the law and that because of technical defect in the form of issuing the order it could not be held to be invalid. The learned counsel for the petitioner points out that here although the reference is "By Order", but it does not even show by whose order it was issued as was the case in the Bombay case. It is true that under the reference the Secretary or the Under Secretary signing the notifications has not stated in so many words by whose order he was publishing the notification, but it is obvious in the case of the original reference, in the body of which it is clearly stated that the reference was being made by the Chief Commissioner, that under the reference in the notification, the words "By Order" obviously mean by the order of the Chief Commissioner.

In the case of the amendment, as pointed out, in the main body there is no reference to the Chief Commissioner, but it states that it is an amendment of the original reference and then after giving the details of the amendments it is again signed in the same way as the original reference. It appears to me that the details as appearing in the original reference in the first part of the notification making amendment in the original reference because it was considered unnecessary to do so since the amendment was to be read not standing as such but as forming part of the original reference. So in my opinion on this account the notifications are not defective.

(15) The learned counsel then points out that according to notification No. LRI (9), dated 28-6-1947, the Chief Commissioner of Delhi has been given the power to perform the functions of the State Government under Act No. XIV of 1947 and that he has no power further to delegate the exercise of the delegated power to some other authority. It is not the case that under the notification referred to the delegation to the Chief Commissioner is not proper. But in this case the Chief Commissioner has not delegated his powers either to the Secretary or to the Under Secretary under whose signatures the notifications appear. He has himself taken the decision and exercised the powers and all that the Secretary and the Under Secretary have done is to publish the notifications as agents or the

servants of the Government. This in my opinion not a case of further delegation of powers.

(16) The learned counsel for the petitioner contends that, in any case, (a) the notifications should have been in the name of the President and (b) that the Chief Commissioner of Delhi had no authority to issue the notifications because he is not the State Government under Act No. XIV of 1947. The argument is put in this way. This case has arisen from the time when there were still Part "C" States that is, from the time before the Reorganisation of States in 1956. The learned counsel for the petitioner says that under Art. 246(4) of the Constitution Parliament had power to make laws on all subjects in so far as Part "C" States were concerned and the Delhi State was one such State. It in fact is now a Centrally administered area under the amended Constitution.

Then reference is made to Art. 73 and it is pointed out that the executive power of the Union is co-extensive with its legislative power and so it is. Under Art. 77(1) of the Constitution all executive action of the Government of India is to be expressed to be taken in the name of the President. Under Art. 53(1) the President shall exercise the executive power either directly or through officers subordinate to him in accordance with the Constitution. Article 239 relates to the administration of Part "C" States and sub-art. (1) provides that the President shall administer such a State "acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant Governor to be appointed by him".

The learned counsel for the petitioner says that when the President is acting under the last mentioned provision he is acting through one of his subordinates within the scope of Art. 53(1) and when he is exercising executive power of the Union in this manner then the order must be issued in his name. I should have thought that reference to Art. 53(1) was not at all necessary because that is a general Article and the article that applies to a case like this is Art. 239(1). The last mentioned Article itself says that the President shall administer a Part C State through a Chief Commissioner or a Lieutenant-Governor to such extent as he thinks fit.

These words are wide enough and specific enough for the President to issue an order under this Article. So that is not necessary to go back to Art. 53(1) for this purpose. But the learned counsel for the petitioner rightly points out that all the power of administration are not automatically vested in the Chief Commissioner or the Lieutenant Governor and that is to be done by an order of the President as and when necessary. This is true. But to the extent to which the administrator of a Part C State has been made over to a Chief Commissioner he is the administrator of the State.

Article 367 provides that the Constitution is to be interpreted having regard to the General Clauses Act 1897. In S. 3(60) of that Act a State Government in respect to a Part C State is defined to be the Central Government. In the same section item No. 8 defines Central Government and in so far as a Part C State is

concerned the definition includes the Chief Commissioner of such a State. So that for the present purpose the Chief Commissioner of Delhi State is the Central Government and when he issues an order as in the present case he is issuing it in that capacity.

So that it cannot be said that he is not the authority in whose name such an order should be issued or that he is not the authority which is the State Government within the scope of S. 2 of Act No. XIV of 1947. In my opinion the reference has been made by a proper authority and by an authority which is within the scope of S. 2 of Act No. XIV of 1947 State Government in so far as the reference of the present dispute to the Tribunal is concerned.

(17) The result is that the petition is dismissed. The petitioner has already substantially implemented the award and I am not disposed to award costs against it. It might well have been otherwise if the petitioner had not implemented the award.

(18) Petition dismissed.