

(1960) 05 CAL CK 0028
In the Calcutta High Court

Britannia Engineering Company Ltd. and Another	APPELLANT
Vs	
Basu Mazumdar and Others	RESPONDENT

Date of Decision : 05-05-1960

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10, 36A

Citation : 65 CWN 636 : (1961) 2 LLJ 310

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The petitioner 2 is McLeod & Co., Ltd., which is the managing agents for the petitioner 1, the Britannia Engineering Company, Ltd. The respondent 3, Jnanendra Nath Chatterjee, was employed as stenographer at the head office of McLeod & Co., Ltd. In January 1940 he was transferred to Britannia Engineering Works at Titaghur and subsequently in 1943 he was given a fresh appointment letter by the Britannia Engineering Company.

2. After the enactment of the Industrial Disputes Act, 1947, the Government of West Bengal set up some omnibus tribunals, popularly known as the Engineering Tribunal (1947) and the Mercantile Tribunal, etc. (1948). The former dealt with the disputes in the engineering industry while the latter dealt with disputes in commercial and mercantile establishments which were members of the Bengal Chamber of Commerce. The respondent 3 seems to have accepted his emoluments in terms of the award of the Engineering Tribunal. While working at the head office, the respondent 3 became a member of the provident fund and he was allowed to continue to be a member of that fund even after his transfer. Thereafter, disputes and differences arose between the petitioner-companies and respondent 3 as represented by respondent 4, "and the matter was referred to the Second Industrial Tribunal for adjudication.

3. The issues that were referred were as follows:

(1) Is Sri Jnanendra Nath Chatterjee a member of the head office staff?

(2) Is he entitled to the increased emoluments awarded by the Mercantile Tribunal?

(3) Is he entitled to be a member of the provident fund (for Indian and uncovenanted staff) of the head office of McLeod & Co., at 3, Netaji Subhas Road, Calcutta-1?

4. The tribunal held in favour of Chatterjee on the first issue. He was declared to be entitled to the benefits receivable by the staff at the head office. Issue (2) was held against him. In other words, it was held that he was entitled to the benefits under the award of the Engineering Tribunal and not the Mercantile Tribunal. Issue (3) was also decided in his favour. In other words, he was held to be entitled to be a member of the provident fund of the head office of McLeod & Co.

5. Against this award there was an appeal to the Labour Appellate Tribunal. So far as issues (1) and (3) are concerned, they were upheld, but the finding of the tribunal on issue (2) was reversed. The Labour Appellate Tribunal held that with effect from 13 October 1955 respondent 3 should be paid increased emoluments on the basis of the Mercantile Tribunal award and arrears should be paid within one month from the date of the decision. Respondent 3 thereafter made an application to this Court under Article 227, which was dismissed.

6. It appears that thereafter the parties were not ad idem on various questions that arose and Government was approached. On 1 September 1958, Government purported to make an order of reference u/s 36A of the Industrial Disputes Act. The preamble to the order recites that in the opinion of the Governor, difficulties had arisen with regard to certain questions as to the interpretation of the award of the Second Industrial Tribunal as modified by the decision of the Labour Appellate Tribunal. The questions that were referred were as follows:

(1) Whether any amount in respect of arrears in wages, etc, as per the said award of the tribunal as modified by the said decision of the Labour Appellate Tribunal is due to the employee?

(2) Whether the splitting up of his wages in the manner effected by the company is proper and justified?

(3) To what relief is he entitled?

7. It is against this order that this application is directed. The complaint is that this order of reference is not in accordance with the provisions of Section 36A. The relevant part of Section 36A runs as follows:--

36A. Power to remove difficulties.--(1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such labour court, tribunal or national tribunal as it may think fit.

(2) The labour court, tribunal or national tribunal to which such question is

referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

8. The question is whether the order of reference shows that Government had doubts and difficulties with regard to the interpretation of any award and whether it referred for decision of a tribunal only the question of interpretation. From the facts mentioned above, it is obvious that the questions covered by the award were varied and complicated. The parties put different interpretations and particularly as to the manner in which the award of the Mercantile Tribunal should be implemented. Government, however, does not say on what point of interpretation it had any doubt or difficulty. No tribunal reading this order of reference, can understand or comprehend as to what doubts and difficulties had arisen in the mind of Government as regards interpretation. The first issue simply asks the tribunal to calculate as to whether any amount in respect of arrears in wages, etc., is due under the award. This is a mere matter of calculation and not interpretation. It is nobody's case that the entire award is incomprehensible. A part of the award may be incomprehensible or may have given rise to reasonable doubt. But no such point has been specified or referred to. u/s 36A of the Act, a reference cannot be made in order to supplement the original award. All that can be referred under this section is an interpretation of an award already made. The implementation thereof will have to be made on the strength of the original award, and not the award which interprets it. We find however that issues (2) and (3), and particularly (3) are couched in language which would make, or are calculated to make, this award as a supplementary award, that is to say, an award which could then be enforced by itself.

9. With regard to issue (2), it will be observed that the reference is not whether the splitting up of the wages in the manner effected by the company is in accordance with the provisions of the award as properly interpreted. In the language in which it is couched, the order of reference directs an investigation into the conduct of the company. But even if one can take a liberal view of issue (2), namely, that the tribunal is to find out what the interpretation is as to the splitting up of wages, issue (3) alters the situation, because it is contemplated that after making an investigation into the conduct of the Company the tribunal is called upon to name a sum or indicate the reliefs to which the workman is entitled and thereafter the liability as declared under this award would be put into execution. In my opinion, the order of reference as framed is not in accordance with the provisions of Section 36A and, therefore, the tribunal has no jurisdiction. From one point of view, it is substantially a fresh reference u/s 10, which, of course, is not permissible. If it is taken to be a reference u/s 36A, then it is misconceived.

10. The result is that this reference should not be allowed to proceed upon this defective order of reference, and, therefore, the rule must be made absolute and the order of reference dated 1 September 1958 is quashed and set aside by a writ in the nature of certiorari. There will also be a writ in the nature of

mandamus directing the respondents not to give effect to it. This will, however, be without prejudice to the powers of Government to make an appropriate reference in accordance with law, u/s 36A or any other appropriate section of the Industrial Disputes Act. No order as to costs. This will not affect orders of costs already made.