
(1959) 10 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 371 of 1957

Burmah Shell Workers Union, Ernakulam APPELLANT
Vs
State of Kerala and Others RESPONDENT

Date of Decision : 30-10-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Amendment) Act, 1956 — Section 18(1), 19(2)
Industrial Disputes Act, 1947 — Section 10, 10(1), 18(1), 19(2), 7
Kerala Industrial Disputes Rules, 1957 — Rule 59

Citation : AIR 1960 Ker 190 : (1960) 1 LLJ 323

Hon'ble Judges : K. Sankaran, C.J;T.K. Joseph, J

Bench : Division Bench

Advocate : Panampilli Govinda Menon, P.K. Krishnankutty Menon and P. Narendra Menon, for the Appellant; Government Pleader for 1st Respondent, G.B. Pai, P. Govindan Nair, K.V.R. Shenoi and P.K. Kurian for 2nd Respondent, T.C.N. Menon and N. Gangadhara Menon for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Joseph , J.—This is a petition by the Burmah Shell Workers Union, Ernakulam, praying for a writ of certiorari or other appropriate writ, order or direction quashing an order of the Government of Kerala dated 21-8-1957 (Ext. J) referring the disputes mentioned therein for adjudication to the Labour Court, Ernakulam. The petitioner also prays for a writ of prohibition or other appropriate writ, order or direction restraining the Labour Court from proceeding with the enquiry. The first respondent is the State of Kerala, the 2nd respondent, the Burmah Shell Oil Storage and Distributing Company of India Limited, Ernakulam, the 3rd respondent T. K. Rajan, Secretary, Burmah Shell Temporary Workers Action Committee, and the 4th respondent the Presiding Officer, Labour Court, Ernakulam.

2. The facts stated in the petitioner's affidavit may be briefly stated: The Burmah Shell Workers Union is the only representative Union of temporary

workers attached to the Burmah Shell Installation, Ernakulam. It was registered in 1955 originally under the name of Burmah Shell Temporary Workers Union, but the name was changed later to the present one. The Union was registered to look after the interest of the temporary workers who are not admitted as members of the Petroleum Workers Union, membership of which was open only for permanent workers. An agreement (Ext. C) was entered into between the management and the petitioner-Union in October, 1956, in respect of bonus for the year 1955.

There were other outstanding disputes and other agreement (Ext. D) was entered into on 27-3-1957, whereunder the management made 85 temporary workers permanent according to seniority of service. Ext. D was entered into after placing the same before a general meeting of the members of the Union, and a copy of the agreement was also sent to the appropriate authorities. A further agreement (Ext. E) was entered into between the petitioner and the 2nd respondent on 28-5-1957, to implement Ext. D and this contained names of permanent and temporary workers to be retained by the second respondent. According to this agreement, 85 of the temporary workers were made permanent and 75 put on the regular temporary list.

The remaining 63 with short service had to be retrenched. Out of these 63, fortythree have accepted retrenchment compensation and are, therefore, incompetent to question the settlement. No worker, has approached the Union about the settlement arrived at. The leaders of the petitioner-Union belong to the Congress party and the Government being interested in encouraging unions having political affiliation to the Communist Party have been trying to disrupt the existing Union. With this object in view the District Labour Officer, Alwaye, sent a letter (Ext. F) to the Secretary of the petitioner-Union on 4-6-1957 asking him to attend a conference on 8-6-1957.

It was seen from the letter that Mr. M. M. Ahdulkader, Advocate, was to represent the temporary workers. Suspecting the motive behind the move, the Secretary of the petitioner-Union declined to attend the conference. Ext. F was followed by another communication (Ext. G) to attend a conference to be held by the Labour Commissioner on 19-6-1957. The time of the conference was later changed from 10 A. M. to 5 P. M. and Ext. G1 is the notice regarding the same. In Ext. G and G1 also it was stated that the temporary workers were to be represented by the same lawyer mentioned in Ext. F. The Secretary of the petitioner-Union did not attend till the conference either.

Finally the petitioner received a telegraphic communication from the Labour Commissioner that the Minister for Labour would be holding a conference on 1-7-1957, to consider the disputes. The date was later changed to 4th July. Exts. II and H1 are the telegrams received by the petitioner regarding this conference. The petitioner did not attend this conference either and thereafter the notification sought to be quashed (Ext. J) was issued by the Government on 21-8-1957. Ext. J reads as follows:

"Whereas, the Government are of opinion that an industrial dispute exists between the Installation Manager, Burmah Shell Oil Storage and Distributing Company of India Limited, Ernakulam and the workmen of the above company represented by Sri. T. K. Rajan, Secretary, Burmah Shell Temporary Workers' Action Committee, C/o Shri. M. M. Abdul Kader, M. A., B. L., Advocate, Ernakulam, in respect of matters mentioned in the annexure to this order;

And, whereas, in the opinion of the Government it is necessary to refer the said industrial dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Section 10(1)(c) of the Industrial Disputes Act of 1947 (Central Act XIV of 1947) the Government hereby direct that the said industrial dispute be referred for adjudication to the Labour Court, Ernakulam.

(ANNEXURE)

1. Whether the agreement dated 27-3-57 between the management and the Burmah Shell Workers Union is valid and binding on the temporary workmen of the concern?

2. What should be the principles and procedure to be adopted by the management regarding confirmation of temporary workmen?

3. If the said agreement is valid and binding whether the terms and conditions thereof have been properly implemented. if not, to what reliefs are the workmen entitled?

4. Whether the retrenchment of temporary workmen is necessary and if so, whether the principles and procedure relating to retrenchment have been followed by the management?"

3. The grounds on which the petitioner seeks interference under Article 225 may be summarised thus:

(1) A valid agreement between the management and the Union was in force on the date of the reference and as such the Government had no jurisdiction to make a reference under the Industrial Disputes Act;

(2) There is no industrial dispute at all to be referred to the Labour Court;

(3) The questions referred do not come within the jurisdiction of the Labour Courts and as such the reference is bad and the fourth respondent has no jurisdiction to proceed with the enquiry; and

(4) The reference is mala fide.

On these grounds the petitioner prays:

"(a) that this Honourable Court be pleased to call for the record of the case and quash by a writ of Certiorari and/or other appropriate writ, direction or order, the

Government Order No. L. Dis. 13470/57/L and LAD dated 21-8-1957 produced along with the affidavit in support of the petition and marked Ext. J;

(b) that this Honourable Court be pleased to issue a writ of prohibition and/or other appropriate writ, direction or order, restraining the 4th respondent from proceeding with the industrial dispute between the 2nd and 3rd respondents referred to it by Ext. J order; and

(c) that this Honourable Court be pleased to pass such other and further orders as are deemed just and necessary in the circumstances of the case."

4. On behalf of the first respondent, the State of Kerala, an Assistant Secretary to the Government has filed a counter-affidavit. He denies the allegation that the petitioner is the only Union representing the temporary workers and further alleges that there is yet another Union known as the Petroleum Contract and Temporary Workers Union. It is also stated that the agreements, Exts. D and E, and the lists appended to the latter were disputed by some of the workmen with the result that Exts. D and E did not bring the dispute to an end. The fact that retrenchment compensation and other dues were received by some of the retrenched workers does not operate as a bar to the raising of an industrial dispute regarding retrenchment.

The permission given to a legal practitioner to appear for a party in conciliation proceedings is not an illegality and it cannot affect the question whether an industrial dispute exists or not. All the grounds relied on by the petitioner for quashing the notification and prohibiting the 4th respondent from enquiring into the dispute are denied, and it is also contended that the order of reference is an administrative act not amenable to the jurisdiction of this Court under Article 226 of the Constitution. The third respondent supports the State and adds that the Secretary of the petitioner-Union was carrying on the affairs of the Union in an autocratic manner, that Ext. E was entered into by the Union against the wishes of 43 workmen including himself, and that the 63 workmen who were thrown out of employment were not the junior-most.

5. The second respondent, the Burmah-Shell Oil Storage and distributing Company of India Limited, supports the petitioner and contends that the petitioner is the only Union recognised by the management and that there is no other Union or body which has officially or unofficially reported about its existence to the Company. The agreements, Exts. D and E, were arrived at and the lists finalised as a result of several conciliation conferences convened by the Labour Department of the State. All the agreements entered into by the Union were accepted by the temporary workmen without demur.

The 2nd respondent also questioned the right of Mr. M. M. Abdulkader and T. K. Rajan to represent the temporary workmen. All the workmen on whose behalf the reference is seen to have been made were members of the Union at the time Exts. D and E were entered into and they are bound by the same. Out of the forty-three workmen only 16 have been retrenched and 8 of them have accepted

retrenchment compensation in full and final settlement. Thus there are only eight who have not accepted retrenchment compensation and they are not entitled to raise an industrial dispute individually. The second respondent attended the conciliation conferences preceding the references, and took exception to a legal practitioner representing parties in such conferences. This objection was overruled by the District Labour Officer, who chose to hear the legal practitioner.

The 4th respondent has not entered appearance.

6. A preliminary objection was raised on behalf of respondents 1 and 3 that a writ will not lie to quash an order of reference as the same is an administrative act of the Government. It was held in *State of Madras Vs. C.P. Sarathy and Another*, that in making a reference u/s 10(1) of the Industrial Disputes Act, the appropriate Government is doing only an administrative act and the fact that it is to form an opinion on the factual existence of an industrial dispute as a preliminary step to the discharge of its function, does not make (it any the less administrative in character. In *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, it was pointed out that though the making of a reference by the Government is in exercise of its administrative powers,

"that is not destructive of the rights of an aggrieved party to show that what was referred was not an industrial dispute at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned even though the factual existence of a dispute may not be subject to a party's challenge".

This case related to an award of the Industrial Tribunal directing reinstatement of a discharged workman. Holding that the dispute was not an industrial dispute under the Act, the award of the Tribunal was quashed by the Supreme Court. The *State of Bihar Vs. D.N. Ganguly and Others*, is a case in which the question was whether the Government could supersede a reference made u/s 10(1) of the Act which was pending before an Industrial Tribunal at the time the order of supersession was made. Affirming the view of the High Court, the Supreme Court held that the Government had no power to make such an order.

However it was held that a writ of certiorari was not proper as the Government was doing an administrative Act in making the reference and that the appropriate writ was one of mandamus against the State in respect of the impugned notification. In view of these decisions, we uphold the preliminary objection to this extent, namely, that a writ of certiorari will not lie to quash an order of reference u/s 10(1) of the Industrial Disputes Act.

7. The petitioner however has also prayed for a writ of prohibition against the Presiding Officer of the Labour Court and the question whether the preliminary objection applied to this prayer also has to be considered. Reliance was placed on the decision of our brother, Vaidialingam J., in the *The Travancore Sugars and Chemicals Ltd. Vs. The State of Kerala and Another*, in support of the position that a writ of prohibition should not issue at this stage. That was a case in which the prayer was to quash an order of reference u/s 10(1) by a writ of certiorari

and in the alternative to prohibit the Tribunal from holding the enquiry.

It was held that a writ of certiorari would not issue to quash the order of reference, the same being an administrative act of the Government and that a writ of prohibition also could not issue at that stage. The dispute which led to the reference was one between the Travancore Sugars and Chemicals Limited and certain boatmen represented by a Union. The position taken up by the management was that the reference was bad as there was no employer-worker relationship between the management and the boatmen. There was no agreement between the parties on this point, and the Union representing the boatmen was not made a party to the writ petition.

After an exhaustive reference to the decisions on the point, it was held that the question of jurisdiction to make the order of reference depended on investigation of disputed facts, that the plea that the reference was made by the Government without jurisdiction could be raised before the Industrial Tribunal and that a writ of prohibition should not issue at that stage. It was pointed out that it was not a case in which it could ex facie be held that the order of reference was made without jurisdiction. This decision is not an authority for the position that a writ of prohibition cannot be issued even if the order of reference is ex facie without jurisdiction.

We are in complete agreement with the view laid down in that case that when the decision of the question whether an order of reference was made with jurisdiction depends on investigation of disputed facts, it would not be proper for the court to interfere by a writ of prohibition. The decision of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, referred to earlier supports the view that in cases where the order of reference is without jurisdiction and such absence of jurisdiction can be seen without considering disputed questions of fact, it would be proper for the court to interfere even before the Tribunal decides the question.

In view of the decision of the Supreme Court, we do not consider it necessary to consider the other cases which are referred to in *The Travancore Sugars and Chemicals Ltd. Vs. The State of Kerala and Another*. We may however observe that writ of prohibition was refused in these cases mainly because disputed questions of fact were involved. The question whether the court should interfere or not depends on the facts of each case and the test appears to be whether the question can be decided without investigation of disputed facts.

If it involves such investigation, the court, should not interfere. We therefore hold that except to the extent indicated above, namely, that a writ of certiorari should not issue to question an order of reference u/s 10(1) of the Industrial Disputes Act, the preliminary objection is unsustainable.

8. The question which remains for consideration is whether a writ of prohibition should issue against the Labour Court. The main ground relied on by the petitioner are (1) that there was a valid and subsisting settlement between the

management and the workers regarding the subject-matter of the reference which precluded the existence of an industrial dispute and (2) that in any event the matter referred is not one within the jurisdiction of the Labour Court.

9. So far as the first ground is concerned, it is contended by the petitioner that, on the admitted facts, there is no scope for an industrial dispute. All the temporary workers were members of the Burmah Shell Workers Union which was formed in 1955 and recognised by the management in the same year. Several points of dispute were pending between the management and the Union, some of which were settled by agreements, Ext. A, B and C dated 29-10-1955, 4-5-1956 and 23-10-1956 respectively. Exts. A to C are not material for the purposes of this petition.

Another agreement, Ext. D, was entered into between the management and the Union, on 27-3-1957, the main terms of which were that 85 of the temporary workers were to be made permanent, 75 were to be retained as temporary workers and the rest to be retrenched. Provision was also made for drawing up a list of the retrenched persons who were to be given casual employment in preference to new-comers and giving them retrenchment compensation. A later agreement, Ext. E, was made on 28-3-1957 with lists of persons who were made permanent and also those who were kept on as temporary workers. Exts. A to E were entered into as a result of settlements effected at tripartite conferences convened by the Labour Department of the State.

The averments in the petitioner's affidavit that the workers, whom the third respondent purports to represent, were members of the Union at the time these agreements were entered into, is not denied in the third respondent's affidavit. It is contended that there is no industrial dispute as the questions referred for decision by the Government are covered by the agreements evidenced by Ext. D and E which are binding on the Union. The relevant provisions of the Industrial Disputes Act may now be examined.

10. A "settlement" has been defined in the Industrial Disputes Act as follows:

" "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the conciliation officer."

The original definition did not include a written agreement arrived at otherwise than in the course of conciliation proceedings, but this was added by the amending Act, XXXVI of 1956. Section 18(1) provides that a settlement arrived at by agreement between an employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. Section 19(2) prescribes the period of operation of settlements:

"19(2) Such settlement shall be binding for such period as is agreed upon, for a period of six months from the date, on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

11. The disputes between the management and the temporary workers were settled by agreements, Exts. A to E, of which Exts. D and E relate to question of giving permanent work to temporary workers. The main provisions of Exts. D and E have already been referred to. The order of reference, Ext. J. was on 21-8-1957, i.e. within six months of Exts. D and E. It is contended on behalf of the petitioner that Exts. D and E being valid settlements, there could not be any dispute in respect of matters covered by the same on the date of the order of reference.

12. Two points arise for consideration in this connection:

(1) Whether the agreements, Exts. D and E are valid and

(2) Whether the questions referred are covered by Exts. D and E.

So far as the first question is concerned, the averment in the petitioner's affidavit that the Burmah Shell Workers Union is the only representative Union of temporary workers attached to the Burmah Shell Installation, Ernakulain, is not disputed. The workers, whom the third respondent purports to represent, were also members of this Union. The agreements were entered into as a result of negotiations between the company and the temporary workers represented by the petitioner and were signed on behalf of the Union by the President and Secretary. Rule 59 of the Kerala Industrial Disputes Rules, 1957, provides that a settlement arrived at in the course of conciliation proceedings or otherwise shall, in the case of workmen, be signed either by the President and the Secretary of a trade union of workmen or by five representatives of the workmen duly authorised in this behalf at meeting of the workmen held for the purpose. No question of authorisation arises in this case as the agreements were signed by the President and the Secretary of a trade union. The complaint of the third respondent is that the President of the Union was acting in an autocratic way ever since the Union was formed.

This would not be a valid ground to hold that the President was not competent to sign the agreements. The real question is whether he was the President of the Union at the time the agreements were signed and not whether he was a popular President or not. The workmen represented by the third respondent were thus properly represented by the President and the Secretary and the agreements evidenced by Ext. D and E must be held to be valid.

13. As regards the second question, namely, whether the issues referred for adjudication are covered by Exts. D and E, we are of opinion that they are. The

first issue in Ext. J is whether the agreement dated 27-3-1957 between the management and the Burmah-Shell Workers Union is valid and binding on the temporary workmen of the concern. We have already held that, on the admitted facts, the agreement dated 27-3-1957 (Ext. D) is valid. Issues 2 and 4 are:

"(2) What should be the principles and procedure to be adopted by the management regarding confirmation of temporary workmen".

"(4) Whether the retrenchment of temporary workmen is necessary and if so, whether the principles and procedure relating to retrenchment have been followed by the management?".

These are questions covered by the settlement, Ext. D, by which both the management and the workers admitted that retrenchment was necessary and should be effected according to certain principles. The third issue is;

"(3) If the said agreement is valid and binding whether the terms and conditions thereof have been properly implemented. If not, to what reliefs are the workmen entitled?"

The agreement regarding retrenchment was implemented by Ext. K which was executed for that purpose. It is thus clear that all the issues mentioned in Ext. J are covered by the settlements, Exts. D and E. u/s 18(1) of the Industrial Disputes Act, these agreements are binding on all the temporary workers who were represented by, the petitioner. There was thus no industrial dispute to be referred by the Government.

14. The question whether a reference to the Labour Court is proper even if an industrial dispute exists, remains to be considered. u/s 7 of the Industrial Disputes Act, the Government may, by notification in the official gazette, constitute one Or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the second schedule and for performing such other functions as may be assigned to them under the Act. u/s 10(1)(c) the disputes may be referred to a labour court and those which relate to any matter specified in the Second Schedule.

This schedule covers disputes relating to five specified matters as well as others not specified in the third schedule. Item No. 10 in the Third schedule is retrenchment of workmen and closure of establishment. The questions referred fall under this head. However, there is a proviso to Section 10(1) which enables the Government to refer any matter specified in the third schedule to a Labour Court when the dispute is not likely to affect more than 100 workmen. Neither the petitioner nor the 2nd respondent has a case that it is likely to affect more than 100 workmen. In the absence of an allegation to that effect, we do not consider it proper to hold that the Labour Court has no jurisdiction.

15. The petitioner also attacks the reference as mala fide. According to the petitioner, the reference was made to carry out the policy of the Government to encourage trade unions affiliated to the communist Party. The only matter

referred to in support of this ground is that an advocate was allowed to represent the workmen now represented by the third respondent at the conciliation conferences convened by the Labour Department. We do not think that this fact alone is sufficient to uphold this ground.

16. In view of our finding that here was a valid settlement in force, we hold that there was no industrial dispute to be referred u/s 10 of the Act and that the Labour Court should be prohibited from proceeding with the enquiry. Accordingly, we order that a writ of prohibition will issue prohibiting the 4th respondent from adjudicating on the issues mentioned in the order of reference, Ext. J. The original petition is allowed as indicated above. In the circumstances, we direct the parties to bear their costs.