

(1963) 08 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 46 of 1963

Chalchitra Karmachari Sangh

APPELLANT

Vs

Proprietor, Regal Talkies and Others

RESPONDENT

Date of Decision : 08-08-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 14, 15, 16
Madhya Pradesh Shops and Establishments Act, 1958 — Section 58, 61

Citation : AIR 1964 MP 20 : (1963) 7 FLR 328 : (1965) ILR (MP) 56 : (1963) JLJ 728 : (1963) MPLJ 721

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; P.L. Dubey, for Respondent 1 and R.J. Bhawe, Government Advocate for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

This application under Articles 226 and 227 of the Constitution by the President of the Chalchitra Karmachari Sangh, Gwalior, is for the issue of writ of certiorari for quashing a decision of the Industrial Tribunal arrived at in the following circumstances.

The management of Regal Talkies, Gwalior, terminated the services of fourteen of their employees. The petitioner-Sangh then espoused the cause of these employees and raised a dispute contending that the termination of their services was illegal as no charge-sheet was served on any of the employees, no enquiry of any kind was held and no employee was given any notice of retrenchment or paid retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act). The Government then, in the exercise of its powers u/s 10(1) of the Act, referred the dispute for adjudication to the

Industrial Tribunal with the following terms of reference -

"Whether there is a case for reinstatement of 14 employees mentioned below of Regal Talkies Gwalior. If not are they entitled to payment of retrenchment compensation or any other relief."

The Tribunal, after recording evidence of the parties and hearing them, came to the conclusion that the Regal Talkies, Gwalior was a registered establishment under the Madhya Pradesh Shops and Establishments Act, 1958, (hereinafter called the Establishments Act) and the rights and obligations of the owner of the Regal Talkies and his employees were governed by that Act, and as the matter of termination of services of an employee of a registered establishment under that Act was specifically dealt with by Section 58 of the said Act, the dispute raised by the employees could not be made subject to the provisions of the Act of 1947 and, therefore, the reference made under Section 10(1) of the Act was not competent.

The Tribunal, however, proceeded to enter into the merits of the dispute though, as observed by the Tribunal itself, it was not necessary for it to do so, and found that the services of the four-teen employees were terminated simpliciter; that even if it be assumed that they were dismissed, then their dismissal was justified as they had committed certain acts of misconduct and no enquiry or any show-cause notice was necessary; and that the employees were not entitled to any retrenchment compensation u/s 25F of the Act.

Shri Dharmadhikari, learned counsel appearing for the petitioner, argued that it was not open to the Tribunal to decline to entertain the reference made to it u/s 10(i) of the Act and submit its report and award to the Government; that Section 58 of the Establishments Act did not take away the power of the Government to refer the dispute it did to the Tribunal under the Act or the jurisdiction of the Tribunal to adjudicate on it; that the dispute which was referred to the Tribunal for adjudication u/s 10(i) of the Act was not one falling within the purview of Section 58 of the Establishments Act; that Section 58 only made a provision for the service of a notice on an employee before dispensing his services and for enabling him to approach the authority appointed under the Payment of Wages Act, 1936, if his services were terminated in contravention of Sub-section (1) of Section 58; and that it did not at all provide any relief of reinstatement to an employee wrongfully discharged or dismissed. It was further urged that Section 61 of the Establishments Act expressly preserved the right of the employees to move the Government to have the dispute raised by them adjudicated by a tribunal by making a reference u/s 10(1) of the Act.

In our judgment, this petition must be granted. As we are taking the view that the dispute which was referred to the Industrial Tribunal fell within the purview of the Industrial Disputes Act and not under the Establishments Act, it is not necessary for us to examine the tenability of the objection taken in the petition" that the Industrial Tribunal had no jurisdiction to decide whether what was

referred to it was or was not an industrial dispute under the Act and whether, so far as the Tribunal was concerned, the matter was concluded by the reference ordered by the Government u/s 10(1) of the Act.

Indeed, learned counsel for the parties did not address any arguments on this important point. It may, however, be pointed out that there are decisions of certain High Courts holding that despite the order of reference u/s 10(1)(c) the Industrial Tribunal has jurisdiction, in fact it is its duty, to decide if required to do so whether the dispute that was referred to it u/s 10(1) was an industrial dispute. (See *Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another*, ; *The Punjab and Sind Bank Ltd. Vs. Rameshwar Dayal and Others*, ; *K. K. Co-operative Transport Society Ltd. v. Punjab State*, AIR 1959 Punj 75; *K. Motor Service Ltd. v. State* AIR 1957 Mad 700 and *Kaleswari Handloom Factory by Proprietor, P.M.S. Guruswami Nadar and Others Vs. The State of Madras and Others*, at p. 112). Having regard to the provisions of Sections 7A, 10, 15, 16 and 17 of the Act, the question whether the Tribunal can examine its own jurisdiction when a dispute is referred to it for adjudication u/s 10(1) is not free from difficulty.

It must, however, be added that the decisions of the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, and *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, , holding that in spite of the making of a reference by the Government under the Industrial Disputes Act, an aggrieved party can question the jurisdiction of the Industrial Tribunal, and show that what was referred was not an industrial dispute at all, are cases where the jurisdiction of the Tribunal was questioned not before the Tribunal itself but in superior Courts.

Leaving aside, therefore, the question whether it was open to the Tribunal to decline to entertain the reference made to it by the Government u/s 10(1) of the Act and to adjudicate upon it on the ground that the grievances of the fourteen employees could be redressed under the Establishments Act, which was a complete code in itself, and the provisions of the Act of 1947 did not come into play, there can be no doubt that the dispute with regard to reinstatement and payment of retrenchment compensation, which was referred to the Tribunal for adjudication u/s 10(1) of the Act, did not fall u/s 58 of the Establishments Act. The material provisions of Section 58 are as follows -

"58. (1) No employer shall dispense with the services of an employee who has been in his continuous employment for not less than three months, without giving such person at least thirty days" notice in writing or wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for misconduct as may be defined in the rules made by the Government in this behalf.

(2) No employee, who has been in the continuous employment of an employer for not less than three months, shall leave the service of such employer without

giving him at least one week's notice in writing, and if he fails to give such notice, or gives notice of less than one week, he shall forfeit his wages for one week or for the number of days by which the notice falls short of one week, as the case may be.

(3) Any employee in respect of whom the provisions of Sub-section (1) are contravened may apply to the Magistrate of the first class or authority appointed under the Payment of Wages Act, 1936 (IV of 1936) and if such Magistrate or such authority is satisfied that such person has been dismissed without sufficient cause, he may for reasons to be recorded in writing, direct that the employer shall pay one month's wages as compensation to the person so dismissed and thereupon the employer shall pay the amount of compensation to such person.

* * * * *

It will be seen that the scope of Section 58 is very narrow and limited. Sub-section (i) only speaks of giving of a notice to an employee before dispensing with his services and of payment of wages in lieu of such notice. It also says that a notice of dismissal shall not be necessary where the services of an employee are dispensed with for a misconduct. The second sub-section deals with the obligation of an employee to give a notice to the employer when he wishes to leave the services. By the third sub-section any employee, who complains that his services have been terminated in contravention of Section 58 (1), can apply to the nearest First Class Magistrate or authority appointed under the Payment of Wages Act, 1936, for payment to him one month's wages as compensation.

Section 58 nowhere deals with the granting of relief of reinstatement to a discharged or dismissed employee, or with the payment of retrenchment compensation to any employee. That being so, it is difficult to see how the Establishments Act is a complete code in itself giving to an employee all the reliefs which he can get as a result of an award given on a reference made u/s 10 of the Act and how Section 58 of the Establishments Act takes away the power of the Government to make the reference it did to the Tribunal and the jurisdiction of the Tribunal to adjudicate upon it. The jurisdiction of the Tribunal is in no way affected even by sub-section (3).

This is clear from the decision of the Federal Court in AIR 1949 150 (Federal Court), where it has been observed that the tribunal contemplated by Section 15 of the Payment of Wages Act is not one which could affect the jurisdiction of the tribunal set up u/s 7 of the Industrial Disputes Act and to which a reference could be made u/s 7 of the Act.

That the rights and privileges of an employee under any other law are in no way affected by the Establishments Act is abundantly clear from Section 61 of the Establishments Act, which is in the following terms -

"Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to at the date this Act comes into force in a local area,

under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act."

This section clearly says that if an employee has, when the Establishments Act comes into force, any rights or privileges under any other law, contract, custom or usage, or any award, settlement etc., and if those rights or privileges are more favourable to him than those given to him under that Act, then those rights and privileges remain intact and are in no way affected by the Establishments Act. The Establishments Act came into force in 1958. The Industrial Disputes Act, 1947, was already on the Statute Book when the Establishments Act came into force. The rights and privileges of an employee under the Industrial Disputes Act, for which no provision has been made in the Establishments Act or which are more favourable to him than those granted to him under the Establishments Act, have been expressly preserved by Section 61 of the Establishments Act.

Shri Dubey, learned counsel appearing for the Regal Talkies, suggested that the statutory rights Or privileges u/s 61 were those under the Acts repealed by Section 65 of the Establishments Act, and that under the Madhya Bharat Shops and Establishments Act, Samvat 2009, by which the rights of the parties were governed before the Establishments Act became operative, did not give to any employee any relief of reinstatement or of retrenchment compensation. We are unable to accede to this contention, which is contrary to the plain construction of the words "under any other law" occurring in Section 61. These words clearly mean not "under a law repealed by the Establishments Act" but under any law which is operative and in force at the time of the coming into force of the Establishments Act and which continues to be in force thereafter.

In our opinion, the Tribunal was in error in holding that the dispute referred to it for adjudication u/s 10(1) of the Act fell within the purview of Section 58 of the Establishments Act. The dispute was one which could be adjudicated only under the Industrial Disputes Act, 1947, and the Tribunal should have entertained the reference and made an award in conformity with Sections 14 to 16 of the Act.

Learned counsel for the respondent Regal Talkies then said that even if the Tribunal had expressed the view that the reference was not maintainable, there was no necessity of quashing the Tribunal's decision and remitting the matter to the Tribunal for the making of an award as it had also dealt with the merits of the dispute referred to it for adjudication. We do not agree. Having held that the reference was not maintainable and it had no jurisdiction to adjudicate upon the dispute referred to it, the opinion expressed by the Tribunal on the merits of the dispute is in law totally ineffective and cannot in any sense be regarded as an adjudication of the dispute. The opinion expressed by the Tribunal on the merits of the dispute is not a decision or an award or an adjudication which can become enforceable and bind the parties u/s 17A of the Act after its publication u/s 17.

As observed by the Privy Council in AIR 1940 222 (Privy Council) ,

"a Court which declines jurisdiction cannot bind the parties by its reasons for declining jurisdiction; such reasons are not decisions and are certainly not decisions by a Court of- competent jurisdiction. It would indeed be strange if on a dispute as to the jurisdiction of a Court to try an issue, that Court by its reasons for holding that it had no jurisdiction decide and bind the parties upon the very issue which it was incompetent to try."

In our judgment, the opinion expressed by the Tribunal on the merits of the dispute cannot be regarded as a legal adjudication of it when the Tribunal declined to entertain the reference as not maintainable under the Act. If, as we think, the Tribunal erred in declining to entertain the reference and adjudicate upon it on the ground that it had no jurisdiction to do so, then the matter must be adjudicated by the Tribunal in con-formity with the provisions of the Act.

For all these reasons, this petition is allowed, the decision of the Industrial Tribunal dated the nth October, 1962, is quashed, and the Tribunal is directed to entertain the reference made to it by the Government u/s 10(1) of the Act and adjudicate upon the dispute referred to it by the reference. In the circumstances of the case, we make no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.