

(1984) 04 MAD CK 0036
In the Madras High Court
Case No : Writ Appeal No. 921/83

Coimbatore Periyar Mavatta Dravida Panchalai Thozilalar
Munnetra Sangam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 12-04-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10B, 12, 12(5)
Payment of Bonus Act, 1965 — Section 34

Citation : (1986) 1 LLJ 303 : (1985) 98 LW 641 : (1984) 2 MLJ 102

Hon'ble Judges : S. Nainar Sundaram, J;P.R. Gokulakrishnan, J

Bench : Division Bench

Judgement

Gokulakrishnan, J.—The petitioners in W.P. No. 10445 of 1982 are the appellants herein. W.P. No. 10445 of 1982 was filed for issue of a

Writ of Certiorari quashing the reference made by the Government in G.O. Ms. No. 2383, Labour and Employment Department dated 9th

November, 1982. The said G.O. was passed by the Government in respect the dispute regarding bonus between the appellants and respondents 2

to 6, for adjudication by the Industrial Tribunal under S. 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to in this judgment as

the Act). The affidavit in the main writ petition was filed by the General Secretary of the Coimbatore Periyar Mavatta Dravida Thozhilalar

Munnetra Sangam, on behalf of the appellants, inter alia alleging that bonus was paid to the workers according to ""Sima Formula"", that this formula

was improved upon in favour of the workers with every settlement since the bonus settlement for 1968-69, that the last such settlement was signed

under S. 18(1) of the Act, that bonus was being paid according to the settlement every year and that for the year 1981-82, the respondents stated

that they would pay bonus for that year only on the basis of the bonus formula given under the Act and not as per the formula agreed upon under the settlement dated 12th Oct. 1979. The appellants, therefore, issued a strike notice under S. 22 of the Act proposing to go on strike from 11th November, 1982, if the management did not come to terms on the bonus dispute for 1981-82. The intervention of the Minister for Labour, according to the appellants, was only an eyewash and even the conciliation proceedings started by the Joint Commissioner of Labour at Madras on 2nd, 3rd, 8th and 9th November, 1982, were not genuine conciliation proceedings as the hands of the Joint Commissioner of Labour were practically tied and that was only an empty formality to comply with the requirement of the Act. It is further contended by the appellants that on 9th November, 1982 the appellants were sent for the residence of the Minister of Labour, that the Minister read out the orders of the Government banning the textile strike under S. 10B of the Act and that the impugned order referred the bonus dispute for 1981-82 to the Industrial Tribunal for adjudication was issued. According to the appellants, the respondents have made up their mind to refer the matter to the Industrial Tribunal and that they had not applied their mind to the question whether the dispute is capable of reference under the Act and the Bonus Act. The appellants have further contended that the question of the payment of bonus on a formula different from the one under the Act cannot be the subject-matter of reference under the Act and that under S. 34 of the Bonus Act, parties can enter into an agreement for bonus under a formula different from the one under the Bonus Act. It is further contended that the respondents are bound by the settlement dated 12th October, 1979, that until further settlement is reached, the ""Sima formula"" and the settlement entered into on 12th October, 1979 must be in force, that since notice under S. 19 of the Act terminating of the formula set out in the 12th October, 1979 settlement and notice under S. 9 of the Act proposing to have a formula different from the one under the settlement, were not given, the reference made is without jurisdiction. With the abovesaid allegations, appellants prayed for the relief aforesaid.

2. The respondents have, inter alia mainly contended that it is not necessary to terminate the settlement dated 12th October, 1979, that it is not

necessary to give notice either under S. 19 or under S. 9A of the Act, that inasmuch as Sub-para. (b) to S. 34 of the Act is no longer in force,

there cannot be any private agreement except the one falling under S. 31A of the Act and that S. 10 of the Act is wide enough for making a

reference of the dispute for adjudication as rightly done by the Government in this case.

3. The fourth respondent, i.e., the Chairman-cum-Managing Director of National Textile Corporation, Coimbatore, has inter alia contended in his

counter-affidavit that the law relating to the payment of bonus being codified and the management having made their position clear, there was

nothing further to settle. In such circumstances, the strike notice issued by the Union was totally lacking in bona fides and it was not intended to

advance the case of the workmen but it was only to pressurise the managements to pay over and above the statutory liability. It was further

contended by the fourth respondent that was real dispute between the managements and the workers is in respect of the claim for additional

payment over and above what is lawfully due as per the 1965 Act. The fourth respondent would assert that the matter has rightly been referred to

the Industrial Tribunal for adjudication.

4. We do not think it necessary to set out the various other contentions put forth by the respondents in the writ petition.

5. The learned single Judge of this Court after adverting to the impugned order and also the relevant provisions of the Act and the Bonus Act,

passed an order dismissing the writ petition. It is against the dismissal of the writ petition, the present writ appeal has been preferred.

6. Mr. N. G. R. Prasad, learned Counsel for the appellants contended that the reference to the Industrial Tribunal is a futile one since the Labour

Court cannot grant anything outside the Bonus Act and that such a reference has been made only to prevent the strike, which is the lawful weapon

at the hands of the workmen. On the other hand, Mr. M. R. Narayanaswami, learned Counsel appearing for the various managements contended

that the dispute is in respect of payment of bonus, to which the management did not accede and hence necessarily the matter was referred to the

Industrial Tribunal. It is further contended by Mr. M. R. Narayanaswami, that it is the union which raised an impossible demand for payment of

bonus, that the attempted conciliation failed and that ultimately, the matter has been referred to the Industrial Tribunal. To the very same effect the learned Government Advocate also put forth his contentions.

7. The demand of the workers is to get additional amount apart from the bonus paid as was paid for three years preceding 1981-82. The

management did not agree for paying the additional amount apart from the bonus and it reiterated that the quantum of bonus should be fixed in

accordance with the payment of Bonus Act, 1965 and that no additional payment could be considered. The conciliation talk failed and as such, the

Government, in exercise of the powers conferred on it under S. 10(1)(d) of the Act, referred the dispute for adjudication, to the Industrial Tribunal.

Questioning the said reference, the workers filed the writ petition. As stated supra, the learned single Judge dismissed that writ petition against

which the present writ appeal has been filed.

8. Mr. N. G. R. Prasad attacks the reference mainly on the ground that it will deprive the worker's right to strike in order to force the management

to make the additional payment apart from the bonus. No doubt, strike is a recognised mode of agitation to press home the demands of the

workers. But, nowhere it is stated that such a strike can be resorted to, to pressurise the management to accede to the payment of additional

amount to the workers apart from the bonus, under the Payment of Bonus Act. In this case, the Government after referring the matter to the

Industrial Tribunal, also passed orders under S. 10(b) of the Act giving reliefs to the workmen pending adjudication. The actual reference reads as

follows :

Whether the demand of the workers for payment of bonus and additional payment for the year 1981-82, in accordance with the principles

adopted in the settlement dated 12th October, 1979 under S. 18(1) of the Industrial Tribunal Act, 1947, entered into between the workmen and

the managements of certain textile mills represented by the Southern India Mills' Association at Coimbatore is justified; if not, the relief to which

the workmen are entitled".

Section 2(k) of the Act defines "industrial dispute." It means, "any dispute or difference between employers and employees, or between employers

and workmen, or between workmen and workmen, which is connected with the

employment or non-employment or the terms of employment or with the conditions of labour, of any person;

Section 12 of the Act deals with the duties of the conciliation officer and this section is invoked when there is an industrial dispute, whether it exists actually or is apprehended. Section 12(5) of the Act is mandatory in nature and it reads as follows :

12(5), on a consideration of the report referred to in Sub-s. (4), the appropriate Government is satisfied that there is a case for reference to a

Board (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

It is for the subjective satisfaction of the appropriate Government for referring the matter to the Industrial Tribunal. Even, in respect of an

apprehended dispute, such reference can be made. Such propositions have been very well laid down in *The State of Bihar Vs. D.N. Ganguly and*

Others, and *Shambu Nath Goyal Vs. Bank of Baroda*, . In the latter decision it has been clearly held that if the dispute was an industrial dispute as

defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the

Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction

merely because on its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those

matters. It has been further held by the Supreme Court in that case that the Tribunal or Court cannot sit in appeal over the decision of the

Government and come to a conclusion that there was no material before the Government.

9. As far as the present case is concerned, the workers definitely want additional bonus and the conciliation effected therefore failed. The argument

of Mr. N. G. R. Prasad, suggesting that the workmen's right to agitate, strike and somehow make the management to pay the additional bonus, is

being curtailed by the reference made by the Government to the Industrial Tribunal, cannot be countenanced. We respect the rule of law. If

reference has been made as per law and if it is found that there is a dispute

which has not been resolved, the correct procedure is to refer the matter to the Industrial Tribunal for adjudication. Correctly, the Government has referred the matter to the Industrial Tribunal and it is open to the workmen to agitate and assert their right to get additional bonus either under the Act or under the Payment of Bonus Act but the workmen cannot pressurise the management by strike to pay additional bonus, which has to be settled by adjudication. The mere fact that the law is viewed by the workmen otherwise, cannot, in our opinion, give a right to the workmen to resort to strike in order to pressurise the management to accede to the demand of the workmen, which they cannot get lawfully. In the present case, it is always open to the workmen to come to an understanding even before the Industrial Tribunal as regards the payment of additional bonus even though the conciliation effected before reference has failed. As it is, we do not find any merit in the present writ appeal and we are in complete agreement with the reasoning of the learned single Judge of this Court who dismissed the writ petition filed by the workmen.

10. For all these reasons, the Writ Appeal is dismissed. There will be no order as to costs.