
(1974) 01 KL CK 0002
In the High Court Of Kerala

Dalmia International

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 28-01-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25A, 25C

Citation : (1974) 2 LLJ 90

Hon'ble Judges : V.P. Gopalan Nambiyar, J;K. Bhaskaran, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, J.—This writ petition has been referred to a Division Bench as it was felt that an important and interesting question arose for determination. The petitioner, a company incorporated under the Indian Companies Act under the name and style of Dalmia International, in Kundara, carries on, among other things, the business of running a cashew nut factory. It seeks to quash Ext. P2 award of the Industrial Tribunal, Alleppey. The question referred to the Tribunal was:

Payment of Wages to the monthly paid staff for the period from 1-10-1968 to 31-12-1968.

The Tribunal found that the closure of the factory for the three months from 1-10-1968 to 31-12-1968, on the alleged reason of the dearth of raw nuts cannot be considered as a bona fide closure and so the management is not entitled to get the benefits of the ruling of the Kerala High Court in *South India Corporation v. All Kerala Cashewnut Factory Workers' Federation*, Quilon (1960) K.L.T.20. Therefore, it held that the management had to pay full wages to the unemployed monthly paid staff for the period specified in the reference.

2. The plea of the management was that the cashew industry, Quilon was a seasonal industry and had been recognised as such by the decision of the Kerala High Court, noticed above ; and being so, the provisions as to lay off compensation, etc., will have no application to it, having regard to Section 2(k).

25A(1)(b) and 25C of the Act; and further, that as the certified standing orders for the said industry, (a copy of which was produced as Ext. M2 before the Tribunal and Ext. P1 before us), showed that as cashewnut is a seasonal crop there would be no work for more than eight or nine months in the year, (vide Clause XI (4), sanctity had to be attached to the certified standing orders as explained by the Supreme Court decisions. On these grounds, the management sought to escape liability for payment of wages for the period covered by the reference. In the reply statement filed by the management, the plea taken was that the factory run by the management is seasonal in nature and the standing orders certified for the factory specially provided that work would be available only for eight or nine months. It was contended that the seasonal nature of the factory was raised and proved at the conciliation stage, and that being so, the jurisdiction to decide the question, was in the Government u/s 25A(2) of the Industrial Disputes Act. In the re-joinder statement filed by the staff, it was denied that the Dalmia International, was either seasonal or intermittent. It was stated that no standing order was ever certified by the factory in particular. It was denied that the question of the seasonal nature of the factory was raised at the conciliation state.

3. On the above pleadings which squarely raised the seasonal character of the industry, Ext. P2 award, dealt with the question in a rather unsatisfactory way. It extracted the testimony of M.W.I, which, inter alia stated:

Ext. M1 is the letter sent by the Certifying Officer, Standing Orders are marked as Ex. M2.

Ex. M1, we find, is an acknowledgment from the Certifying Officer of the receipt of the petitioner's letter along with the declaration under Rule 9 of the Kerala Industrial Employment Standing Orders, Rules 1958, intimating the fact that the petitioner had joined the group of cashewnut industrial establishments, for which standing orders have already been certified. In the light of what was stated in the said letter, we should have expected more specific proof that the group of establishments which the petitioner joined, had a certified standing order, and that the same contained a clause of the type of Clause XI (4) of Ex. M2 (Ext. P1 in this writ petition). We see none. This aspect apart, counsel for respondent contended that under the provisions of the Standing Orders Act and the Rules, the power of certification of standing orders would relate only to matters dealt with by the Act and that the availability of raw products throughout the year, or the seasonal nature of the industry, are not matters dealt with or provided for in the Act, and, therefore, the same cannot be covered by a standing order. It was also contended by counsel for the respondents, that there had not been a due certification of the standing order by the authorities constituted under the Act and, therefore, no sanctity could attach to the standing order, as claimed by counsel for the petitioner, and as pointed out by the Supreme Court in *Western India Match Company Ltd. Vs. Workmen*, and in *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, . Counsel for the respondent also contended that the

decision of this Court in South India Corporation's case noticed earlier was a case where the seasonal character of the business was not disputed, and, therefore, the decision was quite understandable and distinguishable. But in this case, it was pointed out, that as the seasonal character of the business of the petitioner's industry was hotly debated, it was not open to the Tribunal to decide the same, and that the jurisdiction to decide the question was left by the Act to the Government under the provisions of Section 25A(2) of the Industrial Disputes Act. The said provision reads:

25A(2) - If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government therein shall be final.

Counsel for the respondents and the Government Pleader appears to be right in their submissions that the controversy as to the seasonal nature of the industry in this case was sufficiently reflected in the pleadings before the Tribunal, and that the question was agitated before it whether the establishment was of a seasonal character or whether the work was conducted therein only intermittently. Unfortunately, the Tribunal does not seem to have applied its mind pertinently to this aspect of the question. In *The Kohinoor Saw Mill Co. Ltd., Baliapatam, North Malabar Vs. The State of Madras*, a Division Bench of the Madras High Court had occasion to consider the scope and ambit of Section 25A(2). It was explained that the only jurisdiction conferred upon the Government by Section 25A(2) was to decide if the question arose whether an establishment was of a seasonal character or the work performed therein was only intermittently. The Division Bench held that the "question" within the meaning of Section 25A(2) could arise, only if there is a disputed claim of right or a disputed liability. It was observed that it need not necessarily be an industrial dispute as defined u/s 2(k) of the Act, but nevertheless it had to be a dispute. In the light of the principles it was held, on the actual facts in *Kohinoor Saw Mills Co. Ltd.*'s case that no question actually arose within the meaning of the section and, therefore, the Division Bench declined to quash the order of the Government. It was pointed out in that case that there was no dispute in regard to the question, and, therefore, the invocation of a non-existent jurisdiction u/s 25A(2) of the Act, did not in the circumstances, require to be corrected, in proceedings under Article 226.

4. In the instant case, as we noticed earlier, it cannot be said that the question has not been pointedly or specifically raised. Having been thus raised, it would have been open to the Tribunal, - as we see the position-either to refer the question for decision by the appropriate Government, or to direct the parties to move the appropriate Government to give its decision ; and postpone the decision of the question referred to the Tribunal till the Government had given its decision on the matter involved u/s 25A(2). As there has not been a proper approach to this question, or a proper determination of the same, we would quash the order of the Tribunal. We allow this writ petition, and quash Ex. P2

award and remit the matter back to the Tribunal for being dealt with in accordance with law and in the light of the observations contained in this judgment. We make no order as to costs.