

(1971) 07 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 69 of 1968

Deokinandan Prasad and Others

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 09-07-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(4), 10A, 36, 36A

Citation : (1971) PLJR 656

Hon'ble Judges : N.L. Untwalia, J; Akbar Hussain, J

Bench : Division Bench

Advocate : Padmanand Jha, Rama Raman and Ram Krishna Prasad, for the Appellant; Lal Narain Sinha, R.P. Katriar and Satish Kumar Katriar, for the Respondent

Judgement

N.L. Untwalia, J.—This writ application by the five petitioners arises under these circumstances. Rohtas Industries Ltd., Dalmianagar and Ashoka Cement Ltd., Dalmianagar, have got various kinds of industries situated at Dalmianagar in the State of Bihar. The Works Director and the Works Manager of the said Industries are respectively respondents 3 and 4. There are two Unions known as Rohtas Industries Mazdoor Sangh and Rohtas Industries Staff Union, Secretaries of which are respectively respondents 5 and 6 to this writ application, operating at Dalmianagar. The workmen of respondents 3 and 4 made demands in the year 1962 from the Management for revision of dearness allowance and bonus for the years 1960-61 and 1961-62. The matter was referred to the arbitration of Shri K.S.V. Raman (retired I.C.S.) u/s 10A of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) hereinafter called the Act. Shri K.S.V. Raman as an Arbitrator gave his award which was published in the Bihar Gazette dated the 15th June, 1964. According to the award certain amounts of bonus and dearness allowance were to be given to the workmen of the Industries. The two Managements filed two writ petitions in this Court which were numbered as

M.J.C. 1105 of 1964 and M.J.C. 1106 of 1964 to challenge the award of Shri Raman. The two writ applications were dismissed by this Court on the 22nd August, 1966, on grant of certificate of fitness for appeal to the Supreme Court, the Managements filed Civil Appeals 2142 and 2143 of 1966. It may be mentioned at this stage that on the basis of the agreements entered into between the Management of the two Industries and the workmen represented by Rohtas Industries Mazdoor Sangh and Rohtas Industries Staff Union (respondents 5 and 6 respectively), the two Civil Appeals were disposed of on the 13th of September, 1967. The Court recorded the terms of the agreement and disposed of the two appeals accordingly. In the meantime on behalf of the workmen fresh demands were made sometime in the year 1965. The petitioners claim that they had raised those demands on the 28th of September, 1965 as members of the Action Committees representing some 4,000 workmen of the two Industries. This fact is not accepted by the Management. Be that as it may, the industrial disputes raised in the year 1965 were referred by the State Government to the Industrial Tribunal, Patna, for adjudication in Reference Nos. 17 and 18 of 1966. The copies of the reference notifications are Annexures B and B/1 to writ application. On their face, they show that the Governor of Bihar was of the opinion that industrial disputes existed or were apprehended between the Management of the Rohtas Industries Ltd. and the Ashoka Cement Ltd., Dalmianagar, and their workmen represented by Rohtas Industries Mazdoor Sangh.

At the instance of the Managements a reference was also made by the State Government u/s 36A of that Act for interpretation of the certain provisions of the award of Sri Raman. This reference was numbered as Reference 47 of 1966. All the three References proceeded together before the Industrial Tribunal and have been disposed of by a common award dated the 26th of August, 1967, a copy of which is Annexure I to the writ application. It is stated that the award was published in the Bihar Gazette on 22.11.67. This award is also based upon the agreements arrived at between the Managements (respondents 3 and 4) and the two Unions (respondents 5 and 6), copies of which are Annexures D and D/1 to this writ application, Annexure D is dated 6th April, 1967, Annexure D/1 is dated 10th April, 1967. The petitioners claiming themselves to be the representatives of the Action Committee which had the support of about 4,000 workmen, according to them, endeavoured to be added as parties in the three References. But the Court rejected their prayer by order dated 5.10.66. In Paragraph 3 of the award (Annexure I) it is stated that originally in the References only Rohtas Industries Mazdoor Sangh was made a party by the Government and later on the Industrial Tribunal made Dalmianagar Mazdoor Union a party in Reference nos. 17 and 18 of 1966. The petitions of the petitioners to be added as parties as also of Rohtas Industries Karmachari Sangh and Dalmianagar Mazdoor Sewa Sangh to be added as parties were rejected. When a joint petition of compromise along with the agreements, as embodied in Annexures D and D/1, was filed on 8.5.67, objections were raised by various other persons claiming to represent certain

section of the workmen and objecting to the making of the award on the basis of the compromise entered into between the Managements and certain Unions. All these objectors including the petitioners were heard by the Tribunal and the Tribunal, on a consideration of the submissions made on behalf of the parties, has held--

In conclusion, I find that the terms of the agreement are reasonable, just, fair and in the interest of the workmen, I accept them for giving my award in these references on that basis.

The five petitioners claiming to be the representatives of two Industries have obtained a rule from this Court against respondents 1 to 6, out of whom respondent 1 is the Presiding Officer, Industrial Tribunal, and respondent 2 is the Secretary, Labour Department, to show cause why the award (Annexure I) be not called up and quashed by grant of a writ of certiorari. Cause has been shown on behalf of the Managements respondents 3 and 4, by filing affidavits as also at the time of the hearing by the learned Advocate-General. Nobody has appeared on behalf of respondents 5 and 6, the two Unions, to join hand in any manner in challenge of the award by the petitioners. Mr. Padmanand Jha has appeared in support of the rule. The points urged by him are the following--

(i) That a substantial number of workmen of the Industries had a right to be represented by men of their own choice, particularly when it appeared that the Union representing the workmen was acting against their interest.

(ii) That they had a right to be added as party to the References.

(iii) That the award is beyond the scope of reference and is against the provision contained in Section 10(4) of the Act.

(iv) That the Reference u/s 36A of the Act could not be disposed of by mutual agreement between the Managements and the Unions.

2. It would be convenient to take up points (i) and (ii) together. In this connection firstly it is to be pointed out that there is no prayer in this writ application to set aside the order of the Tribunal dated 5.10.66 refusing the prayer of the petitioners to be added as party to the References nor have the petitioners given any copy of the petition filed by them or the order made by the Tribunal. The signatures of 4,000, workmen, the genuineness of which was not accepted by respondents 3 and 4, as stated in Paragraph 20 of the petition, reading this Paragraph in the context, seem to have been filed after the agreements were filed. The Tribunal, therefore, gave an opportunity to them to have their say in regard to the agreements. But then the petitioners did not make a prayer to be added as party in accordance with Clause (c) of Sub-section (1) of Section 36. They say that they are not member of any Trade Union and in that event they could not be authorised to represent certain workmen in the manner prescribed. But no such authorisation was filed at the time when the application was made for adding them as party. From the impugned award it

does not appear that the Unions which had entered into compromise were acting against the interest of the workmen. On that ground for the first time, it is difficult to take a view in this Court that the petitioners ought to have been added as parties to the References.

3. They, however, have got a right to impugn the award, if it is assailable in law. In the subsequent affidavits filed on their behalf, it has been asserted that they are workmen working in the Industries in question. This fact is not denied on behalf of the Managements. On the principle, therefore, that parties to the References are the workmen, any workman affected by the award may challenge it in this Court by an appropriate application under Article 226 or 227 of the Constitution. There locus standi to challenge the award could not be seriously disputed on behalf of the Managements. I am, therefore, of the opinion that their grievance in this Court that they ought to have been added as parties to the References cannot be entertained and allowed. But, undoubtedly, they have a right to challenge the award (Annexure I).

4. It would be convenient to take up points (iii) and (iv) together. It may not be quite correct to say that a Reference u/s 36A under no circumstances can be disposed of by an agreement between the Management and the Union. To put it so boldly, as learned counsel for the petitioners did, may not be quite accurate. There may be a reference u/s 36A which can be disposed of by agreement between the parties if they agree to a particular interpretation of the award or settlement for which the reference has been made. But surely learned counsel was right in his submission that by an agreement in such a Reference terms of the award could not be varied, as seems to have been done in this case. To that extent the contention is sound. Similarly, Mr. Jha is correct in his contention that the Tribunal has got to confine its adjudication to the points of reference and matters incidental thereto in view of the provision of law contained in Sub-section (4) of Section 10 of the Act. In Reference 17 the following points of disputes were referred for adjudication--

1. Whether the workmen are entitled to bonus for the year 1962-63 and 1963-64? If so, what should be the quantum of bonus?

2. Whether the workmen are entitled to more than 4% of their wages as bonus for the year 1964-65? If so, what should be the quantum of bonus?

By an adjudication simpliciter the Tribunal could not go into the question of bonus for the earlier or the subsequent years except those mentioned in the two points of reference. Nor could it do so as a matter incidental to the points. Submission to the said effect made by the learned Advocate-General on behalf of the Management is not acceptable to me. In Reference 18, however, the point referred was--

Whether the wage structure of the workmen should be revised? If so, what should be the wage structure?

The question referred was wide enough to cover any period for the revision and the fixation of the wage structure. Learned Advocate-General submitted that the expression "wage structure" was wide enough to cover fixation of bonus for the periods, as has been done by the Tribunal, and other matters which were agreed upon between the parties under the two agreements (Annexures D and D/1). In support of this submission, he placed upon a decision of the Supreme Court in (1) Crown Aluminium Works Vs. Their Workmen, . At page 35 (column 2) Gajendra-gadkar, J., as he then was, has observed--

Besides the appellant introduced food concession to workers employed prior to 1951. Thus the constitution of the wage structure in the appellant's concern included dearness allowance, facility bonus and food concession.

This decision seems to have laid down that if in reaching its final conclusion the appellate tribunal has relied upon the circumstances of payment of special bonus, facility bonus, food concession, etc., it commits no error. It would thus appear, as was argued on behalf of respondents 3 and 4, that while fixing the wage structure the Tribunal may fix the bonus also. But then if the two things are dealt with separately, as on the facts and in the circumstances of this case they were, it seems difficult to accept the argument put forward on behalf of respondents 3 and 4 that the point of reference in Reference no. 18 was wide enough to cover the determination of the amounts of bonus for the years for which it has been determined in the award on the basis of the agreement. The point of bonus for three years only, namely, 1962-63, 1963-64 and 1964-65 has been specifically referred in Reference No. 17. I would, therefore, prefer not to rest my judgment in this case that the award is within the scope of reference on the ground that the point referred in Reference No. 18 was wide enough to cover all sorts of disputes including the dispute of bonus, although in a given case it may be possible to take such a view.

5. I now proceed to give the main reasons for rejecting points (iii) and (iv) urged on behalf of the petitioners. It appears that the Tribunal in detail has examined the terms of the agreements arrived at between the Union and the Managements and has recorded the finding that they are reasonable, just, fair and in the interest of the workmen. The same agreements had been filed in the two Civil Appeals in the Supreme Court and were recorded there on 13.9.67. The terms of the Agreements which are quoted in the impugned award as also mentioned in Annexures D and D/1 would show that for industrial truce the Union and the Management decided to settle their dispute in a larger sphere not strictly within the scope of reference in Reference Nos. 17 and 18 or Reference 47. Raman's award was the subject matter of challenge in this Court in the earlier two cases filed under Articles 226 and 227 of the Constitution of India. Those cases were dismissed by this Court no doubt, but Raman's award could be varied by this Court if it was thought fit to be varied. The same thing could be done by the Supreme Court in the two Civil Appeals when the matter was taken up there. Instead of disposing of the Appeals by a judgment of the Supreme Court, it

recorded the compromise and thus varied the terms of Raman's award. The compromise thus recorded in the Supreme Court makes Reference No. 47 of 1966 infructuous and no longer the question of interpretation of Raman's award is a live one. The fourth point, therefore, on behalf of the petitioners can be rejected on this simple ground.

6. The scope of Reference Nos. 17 and 18 as I have discussed above, may not be and cannot be wide enough to cover the determination of the disputes either as to the wage structure or bonus or any other connected matter for the earlier or the subsequent years other than the three years which were mentioned in the two points of reference in Reference 17. But then vital question for determination is whether the Tribunal commits an error of law in making an award on the basis of an agreement which had taken within its ambit matters not strictly covered by the terms of reference.

7. It is a well known proposition of law so far as disputes pending in civil courts are concerned that a compromise even beyond the scope of the dispute can be recorded by a civil court. A civil court cannot adjudicate upon such matter or decide it but surely is competent to record a compromise which embraces matters beyond the dispute in a particular suit. The recording of such a compromise is not illegal. It is a different thing to say that if the compromise relates to an immovable property beyond the one which is the subject matter of the suit, it may require registration. It may be another thing to say that the compromise decree may not be executable as such in respect of the matters beyond the dispute in a suit. But nobody has contended that the recording of a compromise embracing matters beyond the scope of the suit or the compromise is illegal. I am quite conscious of the fact that an industrial tribunal in all matters is not at par with civil courts: in many matters it has a wider jurisdiction--in some it may have a narrower jurisdiction. But in regard to the matter of adopting a compromise as a part of the award, after due consideration, I have come to the conclusion that the Tribunal's power is almost at par with that of the civil court except in one regard. The matters which are to be considered for recording a compromise in a civil court are engrafted in Order 23 Rule 3 of the CPC which may not include the matter of reasonableness, fairness or its being beneficial to a particular party except when minors are involved. While the Tribunal does not record a compromise as such but adopts it as a part of its award after finding it reasonable, just, fair or in the interest of the workmen, the distinction is appreciable. And, yet I do not feel persuaded to accept the argument put forward on behalf of the petitioners that while adopting the agreement as a part of the award, the Tribunal must confine itself to the point referred or the matters incidental thereto. It may well be that the award on pure and simple adjudication could not travel beyond the scope of the reference. But if an agreement is arrived at between a Union and a Management, I see no reason to hold that the Tribunal cannot adopt that agreement as an award merely because the agreement has taken within its ambit certain matters which are not strictly covered by the terms of reference. On the special facts of this case, it will bear

repetition to say here also that the same agreement has been incorporated in the order of the Supreme Court passed on 13.9.67 in the two Civil Appeals. The agreement in accordance with the Act will be binding on those who were party to it. I see no reason to hold that the award based upon such an agreement is invalid and must be upset at the instance of the petitioners. At this stage, reference may be made to the statement of a fact in the further affidavit filed on behalf of the Management. In Paragraph 4 of that affidavit it is stated that a total sum of Rs. 52,00,000 has to be paid to the workmen of Rohtas Industries Ltd. towards the arrear of dearness allowance and bonus, and out of this amount, about Rs. 44,00,000 has already been paid to the workmen of Rohtas Industries Ltd. In such a situation, will it be in the interest of justice or in the interest of the workmen concerned to upset the award and undo that has been done on the basis of the agreement arrived at between the parties in April, 1967? My considered view is that the award based upon the agreements, on the facts and in the circumstances of this case, is not fit to be struck down on the ground that it has traveled beyond the scope of reference and more so at the instance of the petitioners.

8. Learned counsel for the petitioners referred to the decision of a learned single Judge of Madras High Court in (2). The Management of A. Khader Mohideen Bros., Express Beedi Factory Vs. The Workers of the Express Beedi Factory, Gudiyattam and Another, as also in workers employed in 32 Textile Mills in (3) Workers employed in 32 Textile Mills in Coimbatore Vs. Management of Dhanalakshmi Mills Ltd., Tiruppur and Others, . In the latter case it has been pointed out that there is no power in the industrial tribunal similar to one conferred under Order 23 Rule 3 C.P.C. to record a compromise, that in the matter of a compromise the industrial tribunal should either make its own award or adopt a compromise entered into by the parties as a part of its award after considering whether it is a proper one from the point of all the workmen concerned in the dispute and that for that purpose the tribunal should give an opportunity to all the concerned parties to show whether the compromise could be so adopted. In this case the Tribunal has not gone beyond the principle laid down by the Madras High Court. It has adopted the compromise as a part of its award after giving opportunities to all those who had prayed to be added as parties but were not added including the petitioners and thereafter it has made the award thinking that the compromise is fair, just and reasonable. In the background of the underlying principles of settlement of industrial disputes, I do not think that the award based upon the compromise can be held to be invalid merely because some matters are beyond the scope of reference. The earlier case of Madras High Court decides a principle which is applicable to the civil court also that no amount of consent can give jurisdiction where there is none. Undoubtedly it is so. Consent cannot give jurisdiction to a civil court to decide a matter. But the recording of a compromise in regard to matters beyond the scope of the dispute is not taking jurisdiction to decide those matters which the court did not have. Similarly, I am of the view that when an award is made by a

Tribunal on the basis of an agreement then the Tribunal does not adjudicate upon the points of reference; it merely finds out as to whether the agreement is reasonable, fair and in the interest of the workmen and adopts it as a part of the award, If, therefore, strictly speaking, it is not an adjudication, I do not think that it will be in the interest of industrial truce to tie down the hands of the Tribunal for adopting an agreement as a part of its award within the scope of the reference in view of what has been contained in Section 10(4) of the Act. For the reasons stated above, this writ application filed by the petitioners cannot, and is not fit to succeed. It is accordingly dismissed but in the circumstances there will be no order as to cost.

Akbar Hussain, J.

I agree.