

(1992) 02 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No's. 141 and 142 of 1992

E.I.D. Parry (India) Ltd. another

APPELLANT

Vs

Industrial Tribunal, Madras and another

RESPONDENT

Date of Decision : 17-02-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4), 2(b)

Citation : (1993) 2 LLJ 1 : (1992) 2 MLJ 382

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for the Appellant; V. Prakash, for the Respondent

Judgement

1. The petitioner challenges an interim order passed by the first respondent Tribunal in M.A. No. 62 of 1991 in I.D. No. 16 of 1991, dated

November 7, 1991. By this order an ad hoc relief was given by the first respondent Tribunal to the members of the second respondent association.

2. A settlement was arrived at between the second respondent association and the petitioner management under Sec. 12(3) of the Industrial

Disputes Act, 1947 and was formulated with regard to dearness allowance. According to Clause 21(1) of the Settlement, the settlement came into

force on June 1, 1985 and was in force till May 31, 1989 and shall continue to remain in force thereafter until the same is terminated by giving two

months notice in writing by other parties. A notice under Sec. 19(2) & (6) of the Industrial Disputes Act, 1947 was given by the second

respondent Union on March 31, 1989 for termination of the settlement dated May 17, 1985 raising Charter of Demands. A subsequent Charter of

Demands was raised on May 31, 1989. Demand No. 1(B) was with regard to

dearness allowance and the demand of the second respondent

Union was that the dearness allowance should be paid every month based on the previous month's index. The question which was referred to the

first respondent tribunal runs as follows :

.... Whether the demand of the workmen for revision of Wages and Dearness Allowance is justified, if so to fix the revised rates

3. Before the first respondent Tribunal, the second respondent Union filed a claim praying to restore the D.A. of what each employee would have

drawn if the 1985 settlement had not been concluded in the year 1978 and to restore such revision from May 1, 1989 on which date the 1985

settlement was terminated. An application was taken in I.D. No. 16 of 1991 praying to pass an interim award to direct the management to pay a

monthly increase of Rs. 500 to each employee from the month of May 1991 and also to pay a lump sum amount of Rs. 5,000 to each employee,

and such payments may be adjusted in the final award. The said application has been numbered as I.A. No. 62 of 1991.

4. A counter affidavit was filed by the petitioner management stating that the demands will have to be adjudicated by applying region-cum-industry

principle and the financial status of the petitioner company will have to be assessed before considering the demand with regard to wages and the

dearness allowance and that the second respondent Union has to make out a case for revision of wages and other service conditions. It is also

pointed out in the counter affidavit that the respondent Union has not disclosed any prima facie reason to justify its demands and that whatever may

be the merits of the case, it is not possible for the petitioner management to consider an increase of Rs. 500 per month and that the demand for

lump sum payment of Rs. 5,000 is wholly unjustified.

5. When the main dispute was pending, by the impugned order the Tribunal, the first respondent herein, allowed an application taken out by the

second respondent association ordering the petitioner management to pay Rs. 250 as ad hoc increase every month to each employee commencing

from May, 1991 in addition to the existing monthly emoluments and also a lump sum of Rs. 2,000 to each employee as interim relief. Against this

order, the writ petitions have been preferred.

6. Notice of motion has been ordered by me on January 8, 1992. Mr. V. Prakash,

learned counsel appears for the second respondent, has taken notice and filed a counter affidavit.

7. Mr. M. R. Narayanaswamy, learned Senior Counsel appearing for the petitioner management, refers to Chapter IV of the Industrial Disputes

Act, 1947 wherein the powers and duties of the Conciliation Officer are set out. The learned Senior Counsel also refers to Sec. 15 of the Industrial

Disputes Act, 1947 and also refers to Sec. 16(4) of the Industrial Disputes Act, 1947 wherein in the word "award" has been defined. After

referring to the above mentioned provisions of the Industrial Disputes Act, 1947, the learned Senior Counsel contends that the power of the

Labour Tribunal, the first respondent, herein, is not like the power of the Civil Court under O.39, Rules 1 and 2, C.P.C. and that there is no power

in the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") to grant such a relief which has been granted by the Tribunal. According

to the learned Senior Counsel, assuming that the tribunal has got the power to grant interim relief, the tribunal has not followed certain parameters

laid down by certain decisions to grant such an interim relief. According to the learned Senior Counsel the interim relief must have a correlation

with the main relief sought for which is pending before the tribunal, the first respondent herein. The learned Senior Counsel also refers to the main

disputes of these cases and contends that on the facts of the case on hand and taking note of the fact of the disputes raised it is not possible to

grant such an interim relief. According to the learned Senior Counsel the settlement entered into in the year 1985 continues under Sec. 19 of the

Act and also he refers to the decision of this Court in *Valluvar Handloom Textiles v. Government of India*, 1981 I LLJ-458. With regard to the

grant of the interim reliefs, the learned Senior Counsel relies on the decision of the Patna High Court in *Management, B.S.E. Board v. Workmen*,

B.S.E. Board, 1971 I LLJ 389 and the decision of a Division Bench of the Rajasthan High Court in *National Textile Corporation v. State of*

Rajasthan, (1989) 1. L.L.N. 778, apart from referring to the decision of the Supreme Court in *The Management of Hotel Imperial, New Delhi and*

Others Vs. Hotel Workers' Union, , with regard to the powers of the tribunal under sub-Sec. (4) of Sec 10 of the Act. According to the learned

Senior Counsel, the parameters set out in the above mentioned decisions have

not been followed by the tribunal in the cases on hand and that the tribunal has prima facie exercised the power on the facts of the cases which is not correct. The learned Senior Counsel contends that the second respondent Union has not made out a case for ad hoc payment and on the facts and circumstances of the case and taking into consideration the question raised in the adjudication, the instant cases are not fit cases for granting interim relief, assuming for a moment that the tribunal has got the power to grant the same. The learned Senior Counsel further points out that in Tamil Nadu, Sec. 10(4) of the Act has been inserted by Tamil Nadu Act 36 of 1982 and that after the introduction of this section, no interim order can be passed under sub-sec (4) of Sec. 10 of the Act, by the tribunal. It is also pointed out by the learned Senior Counsel that the order passed by the tribunal is not an interim award and that in so far as it is not an interim award, the tribunal has no jurisdiction to pass such an order.

8. Mr. Prakash, the learned counsel appearing for the second respondent Union contends that the tribunal, the first respondent herein, has got power to pass such an interim order under sub-sec (4) of Sec. 10 of the Act and that it is settled law in view of the decision of the Supreme Court in *Hotel Imperial v. Hotel Workers' Union* (supra). According to the learned counsel, it should be "incidental thereto", that is all. The learned counsel points out that ever since 1985 the dearness allowance stands at the same rate and that though a dispute has been referred to and an award has been passed in their favour it was not given effect to and a settlement was entered into in the year 1985. According to the learned counsel para 7 of the order of the tribunal clearly shows that the tribunal has applied its mind and found that prima facie, there are reasons to grant the interim relief. According to the learned counsel, no evidence was let in by both parties and the matter was argued on affidavits and materials and as such the discretion exercised by the tribunal is enough to show that it has applied its mind and that having come to the conclusion for granting the interim relief, it had granted the relief. That apart, the learned counsel points out that the cost of living index had been annexed thereto for the year 1985 and this Court may taken judicial note of this fact and that in so far the interim order of the tribunal, which is impugned before me, is not perverse, this Court need not interfere with the same under Art. 226

of the Constitution of India. With regard to the contention that the settlement of the year 1985 continues till today, Mr. Prakash the learned counsel contends that an industrial dispute cannot be raised when there is a subsisting settlement, that when such a settlement is terminated under Sec. 19 and as such Charter of Demands has been made in this Case. He also points out that a reference has to be read broadly and if the reference is read in that way, there is no scope for the petitioner management to contend that the interim orders are wrong. According to the learned counsel, the Clerks of the management have D.A. ceiling when the managerial staff and peons do not face such a situation. With regard to Sec. 10-B of the Act, the learned counsel point out that the power of the Government is only an enabling power and the Legislature has vested the power on the Government. But the insertion of Sec. 10-B of the Act does not take away the power of the tribunal under Sec. 10(4) of the Act, which is a quasi-judicial power. According to the learned counsel, the field occupied by sub-sec (4) of Sec. 10 is entirely different from the power conferred under Sec. 10-B of the Act on the Government. According to the learned counsel appearing for the second respondent Union, the power under Sec. 10 of the Act has to be taken as an administrative power and also any order passed under Sec. 10-B of the Act is an administrative order and it cannot take away the power under Sec. 10(4) of the Act. Referring to the decision in Gujarat Steel Tubes Ltd. v. G.S.T. Mazdoor Sabha, 1980 1 LLJ 37, the learned counsel for the second respondent Union contends that this Court has no power under Art. 226 of the Constitution of India to grant certain marginal relief taking into consideration the peculiar facts and circumstances of the cases on hand.

9. Replying to the abovesaid arguments Mr. M. R. Narayanaswamy, the learned Senior Counsel points out that the award of the year 1983 is not valid as per Sec. 19 of the Act because the life of the award is only for one year. He also points out that the basis of settlement in the year 1985 was that of the award of the year 1983 and points out that a writ petition W.P. No. 8986 of 1983 is filed by the second respondent against the award of the year 1976 and that in the said matter quietus was given in the year 1988 by the settlement arrived at in the year 1985. The learned Senior Counsel further contends that what was raised in the year 1973 has been

raised once again when the matter has been given quietus. So according to the learned Senior Counsel unless it is decided by the tribunal, as interim relief could be given and on the merits of the case also, the tribunal has not come to correct conclusion. He points out that the Legislature has vested the power with the Government to pass any interim relief under Sec. 10-B of the Industrial Disputes Act. He further contends that when it is so, the earlier decisions cited on this point as to whether the tribunal has "incidental power" to pass orders under Sub-sec. (4) of Sec. 10 of the Act cannot hold good now especially in Tamil Nadu after the amendment which came into force in the year 1982. He further argues that the power under Sec. 10(4) of the Act as an incidental power has been decided only by courts to grant the interim relief and that when the Legislature has stepped in and enacted Sec. 10-B of the Act, the earlier decisions based upon sub-sec. (4) of the Sec. 10 of the Act has got to be ignored. According to the learned counsel, if the tribunal and the Government are vested with the same power to pass interim orders and if a construction is given to that effect such an interpretation will lead to absurdity. The learned Senior Counsel points out that for instance, under Sec. 10-B of the Act, if the Government has passed an order, will it be open to the tribunal to pass an order under Sec. 10(4) of the Act ? He further points out that if such a construction is put forth, it will confer power on two authorities concurrently, one on the tribunal and the other on the Government. According to the learned Senior Counsel such an interpretation is not to be adopted but the section has to be construed harmoniously and not to interpret the section which will lead to absurdity.

10. I have considered the arguments of Mr. M. R. Narayanaswamy, the learned Senior Counsel appearing for the petitioner management and of Mr. V. Prakash, the learned counsel appearing for the second respondent Union. The short point that arises for consideration is whether the interim order passed by the tribunal, the first respondent herein, is correct under Sec. 10(4) of the Act. It is also to be decided whether the tribunal has got the power to pass such an order and whether in view of the introduction of Sec. 10-B of the Act in the year 1982, such a power has been taken away. Assuming if such a power vests with the tribunal, it is also to be noted as to whether the tribunal has followed certain parameters set

out by certain courts.

11. To decide the issue whether the tribunal, the first respondent herein, has got the power to pass an interim order, it would be relevant to extract

Sec. 10(4) of the Act which reads as follows :

.... Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order,

the appropriate Government has specified the points of dispute for adjudication, the Labour Court, or the Tribunal or the National Tribunal, as the

case may be, shall confine its adjudication to those points and matters incidental thereto...

In *Hotel Imperial v. Hotel Workers' Union* (supra) the Supreme Court has held as follows (at P. 1348) :

.... After a dispute is referred to the tribunal under Sec. 10 of the Act, it is enjoined on it by Sec. 15 to hold its proceeding expeditiously and on

the conclusion thereof submit its award to the appropriate Government. An "award" is defined in Sec. 2(b) of the Act as meaning "an interim or

final determination by a Industrial Tribunal of any industrial dispute or of any question relating thereto." Where an order referring an industrial

dispute has been made specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters

incidental thereto (Sec. 10(4)). It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the

points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no

force in this argument, in view of the words "incidental thereto" appearing in Sec. 10(4). There can be not doubt that if, the example, question of

reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with

respect to the same matter would be a matter incidental thereto under Sec. 10(4) and need not be specially referred in terms to the tribunal. Thus

interim relief where if is admissible can be granted as matter incidental to the main question referred to the tribunal with out being itself referred in

express terms.

The next question is as to how the tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word "award

shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or any question relating thereto.

Thus it is open to the tribunal to give an award about the entire dispute at the end of all the proceedings. This will be final determination of the

industrial dispute referred to it. It is also open to the tribunal to make an award about some of the matters referred to it whilst some others still

remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by

Sec. 17. Such awards are however not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim

relief, on the other hand, is granted under the power conferred on the tribunal under Sec. 10(4) with respect to matters incidental to the points of

dispute for adjudication...

In the above mentioned case, the Supreme Court has held that the tribunal exercising the power conferred under Sec. 10(4) of the Act can grant

the interim relief with respect to matters incidental to the points of dispute for adjudication. In view of that, I am of the view that it is not open to

Mr. M. R. Narayanaswamy, the learned Senior Counsel appearing for the petitioner management, to contend that the tribunal has no power to

pass an interim order.

12. The next question to be decided is whether the tribunal has applied its mind or not and considered the question at the correct perspective when

granting the interim order. In *Management, B.S.E. Board v. Workmen B.S.E. Board* 1971 LLJ 389, a Division Bench of the Patna High Court has

held that the tribunal has the power to grant interim relief in appropriate cases in the form of an interim award. While holding so, the Division Bench

of the Patna High Court had held that the tribunal must determine that there is a good prima facie case in favour of the workman for final

adjudication and that on the facts of the particular case interim relief by way of interim award is necessary. A Division Bench of the Rajasthan High

Court in *National Textile Corporation v. State of Rajasthan*, 1989 I LLN 778, has held that the tribunal has got the sole judicial discretion to

decide the dispute specified in the order of reference and the matters incidental thereto. In that case, the Division Bench has held that the tribunal is

competent to grant interim relief under Sec. 10(4) of the Act with respect to

matters incidental to the points of dispute for adjudication, and the tribunal is competent to grant an ad hoc increase in wages in the matter of industrial dispute with regard to demand for increase in wages, for the adjudication of which reference has been made to it by the State Government. It has also been held that the granting of interim relief is purely within the discretion of the tribunal and while granting such reliefs the tribunal should take note of the following points :

- (1) that there is a prima facie case, meaning thereby that there is a serious question to be tried and an existence of a right;
- (2) that the tribunal's interference is necessary to protect the party from that species of injury which is regarded by the Courts as irreparable; and
- (3) the balance of convenience, i.e., the tribunal should weigh the amount of substantial mischief that is likely to be caused to the party claiming interim relief if the same is refused and compare it with that which is likely to be caused to the other side if the interim relief is granted....

So if the principles laid down in the above mentioned cases are considered, I am of the view that on the facts of the case on hand, prima facie the tribunal has not applied its mind at all to come to the correct conclusion. The question referred to for adjudication is as follows :

..... Whether the demand of the workmen for revision of Wages and Dearness Allowance is justified if so to fix the revised rates

A reading of the abovementioned reference shows that the scope of the reference is very wide. So the tribunal has come to the conclusion that an increase in wages is necessary and essential. I do not think the tribunal has considered the issue, but has passed an order prima facie, in my view, without applying its mind. Though the reference, extracted hereinabove, is very wide, the tribunal has to look into the pleadings carefully and the tribunal should have gone into in detail since what is asked for is settlement of the year 1978 which has culminated in an award by settlement in the year 1985. So these are all matters, prima facie, the tribunal should have examined and that it has not been done so. The rise of cost of index cannot be a sole criterion. There are many more things to be considered when an increase in wages is asked for. In my view, the tribunal has passed a cryptic order without adhering to the principles laid down in the above mentioned decisions, while passing an order under Sec. 10(4) of

the Act. A reading of the order of the tribunal clearly shows that it has not applied its mind and has not decided the question as to whether there is

any prima facie case made out and the existence of the right in favour of the respondent Union. So I am of the view that the contention of Mr. M.

R. Narayanaswamy, the learned Senior Counsel has to be upheld on the facts and circumstances of the case that the order is liable to be set aside

applying the principles laid down in the abovementioned cases.

13. The contention of the learned Senior Counsel appearing for the petitioner management that the introduction of Sec. 10-B of the Tamil Nadu

Amendment has taken away the power of the tribunal which passed an order under Sec. 10(4) of the Act, is not convincing. It is well establishing

principle to interpret the provisions of a statute as harmoniously as possible so that there is no conflict of the provisions and likewise that no

provision is rendered otiose. It is also well-established that the power of the Government under Sec. 10(1) of the Act is purely an administrative

function. It has been held so in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, . It has been further observed

in that case as follows : (at pp. 560-561)

.... While exercising power under Sec. 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi-

judicial function, and that in performing this administrative function the Government cannot delve into merits of the dispute and take upon itself the

determination of the lis, which would certainly be in excess of the power conferred on it by Sec. 10. It is true that in considering the question of

making a reference under Sec. 10(1), the Government is entitled to form an opinion as to whether an industrial dispute ""exists or is apprehended

But the formation of opinion as to whether an industrial dispute ""exists or is apprehended"" is not the same thing as to adjudicate the dispute itself on

its merits. Where, as in the instant case, the dispute was whether persons raising the dispute are workmen or not, the same cannot be decided by

the Government in exercise of its administrative function under Sec. 10(1) of the Act. The order of the Government refusing to refer the dispute on

ground that the persons raising the dispute are not workmen is liable to be set aside. As the Government has persistently declined to make a

reference under Sec. 10(1) the Supreme Court directed the Government to make

a reference...

While referring to a dispute under Sec. 10(4) of the Act, the legislature has conferred on the Government a power to issue an order under Sec.

10-B of the Act by Tamil Nadu Act 36 of 1982. Sec. 10-B of the Act reads as follows :

10-B. Power to issue order regarding terms and conditions of service pending settlement of disputed :- (1) Where an industrial dispute has been

referred by the State Government to a Labour Court or a Tribunal under sub-sec (1) of Sec. 10 and if, in the opinion of the State Government, it is

necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential

to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made,

they may, by general or special order, make provisions :

(a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may

be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman;

(b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be

specified in the order; and

(c) for any incidental or supplementary matter which appears to them to be necessary or expedient for the purpose of the order;

Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to

the workmen than those which were applicable to them at any time within three months immediately preceding the date of the order

On a perusal of this, I am of the view that the insertion of Sec. 10-B of the Act has not taken away the power of the tribunal under Sec. 10(4) of

the Act, to pass an interim order. The power under Sec. 10-B is given to the Government to give an interim relief to the workers including the

payment of money by the employer. Sub-secs. (2) and (3) of Sec. 10-B state that such an order shall cease to operate on the expiry of a period of

six months from the date of the order or on the date of the award of the Labour Court or the tribunal as the case may be, whichever is earlier and

that the money which has been paid can be adjusted. So, in any view, if the Government, while referring the dispute has passed an order under

Sec. 10-B of the Act giving an interim relief to the workmen, then the power under sub-sec. (4) of Sec. 10 cannot be exercised by the tribunal.

For instance, when the adjudication is pending before the tribunal, no interim relief can be asked for, if an order has already been passed under

Sec. 10-B of the Act granting some interim relief to the workmen under Sec. 10-B of the Act. At the same time, if no interim relief has been given

while making a reference, the sole authority to decide the dispute and as a matter incidental thereto, the tribunal has got the power before whom

the award proceeding is pending. So the power of the Government to pass an order under Sec. 10-B of the Act has to be exercised immediately

after a reference is made under Sec. 10-(1) of the Act. If it is not made, in my view, it cannot be contended that the tribunal has lost its power to

grant an interim relief.

14. Apart from that, a quasi-judicial power under Sec. 10(4) of the Act cannot be taken away by conferring an administrative power on the

Government by an amendment. It is also settled law that the repeal by implication is not favourable and such interpretation is not to be adopted

unless it is inevitable. The presumption is always against the principle of repeal. Any reasonable construction which offers an escape from implied

repeal must be considered in consonance with the true intention of the Legislature. So, in my view, two provisions can co-exist side by side even

though one may to some extent overlap the other. So if such a construction is given, in my view, it will be harmonious and it will be in accordance

with well accepted principles of rule of constructions as stated above. So I am not able to accept the contention raised by Mr. M. R.

Narayanaswamy, the learned Senior Counsel appearing for the management, that after the introduction of Sec. 10-B of the Act, the power of the

tribunal to pass an interim order has been taken away completely.

15. The contention raised by Mr. M. R. Narayanaswamy, the learned Senior Counsel, that the settlement made in the year 1985 is still in force in

view of Sec. 19 of the Act has not substance since a notice has been given by the respondent Union.

16. Mr. Prakash, the learned counsel appearing for the second respondent Union,

relies upon the decision in The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, , with regard to the concept of wages. I do not think it necessary for me to decide about the question at this stage and it is for the tribunal to go into the question while granting an interim relief after following the principles laid down in the decision cited supra. In view of my conclusions arrived at, the writ petitions are allowed, the impugned orders are set aside and the matter is remitted back to the tribunal and the tribunal is directed to pass orders afresh expeditiously on or before March 31, 1992, since I am told that the main reference is being heard on day-to-day basis. The writ petitions are ordered accordingly. However, there will be no order as to costs.