
(1968) 11 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No. 1614 of 1966

Engineering Mazdoor Sabha

APPELLANT

Vs

Aney (D.M.) and Others

RESPONDENT

Date of Decision : 19-11-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 33B, 33B(1)

Citation : (1969) 2 LLJ 296

Hon'ble Judges : N.L. Abhyankar, J;D.P. Madon, J

Bench : Division Bench

Judgement

Madon, J.—Engineering Mazdoor Sabha, the petitioners, have approached this Court under Art. 227 of the Constitution to set said an order dated 31 August 1965 made by Sri D. M. Aney, the industrial tribunal, Maharashtra, respondent 1, rejecting the petitioners' application to give them a hearing in Reference (I.T.) No. 93 of 1965 and for an appropriate writ, direction or order directing respondent 1 to give the petitioners an opportunity of being heard in the said reference before an award is made and published.

2. The circumstances which have made it necessary for the petitioners to approach this Court are that by an order dated 15 March 1965 made under S. 10(1)(d) of the Industrial Disputes Act, 1947, the Government of Maharashtra referred an industrial dispute between Hind Cycles, Ltd., respondent 2, and their workmen relating to payment of bonus for the years 1961-62 and 1962-63 for adjudication to the industrial tribunal consisting of Sri M. R. Meher. According to the petitioners, they represented a large majority of the workmen of respondent 2 in the matter of the said reference. On 14 May 1965 the petitioners filed their statements of claim, to which a written statement was filed by respondent 2. A contention was raised on behalf of respondent 2 that the said order of reference made by the Government of Maharashtra was invalid. As Sri Meher was of the opinion that the question of validity of the said order of reference could not properly be decided in the absence of the State Government, he directed notice

to issue to the Government Pleader, and the State of Maharashtra was also added as a party to the said reference. Meanwhile the period of appointment of Sri Meher expired on 30 December 1965, and accordingly, in exercise of the powers conferred upon the State Government by S. 33B(1) of the Industrial Disputes Act the said reference which was pending before him was withdrawn by the Government of Maharashtra and transferred for disposal to the industrial tribunal consisting of Sri K. P. Powar. The said order was published in Part I of the Maharashtra Government Gazette of 13 January 1966. Before Sri Powar the reference was adjourned from time to time as it was mentioned to him that a similar question was pending for decision before the Supreme Court. When the matter reached on 25 July 1966 Sri Powar told the parties in open Court that a new industrial tribunal was likely to be appointed and that when such new tribunal was appointed the said reference might be transferred to the new tribunal for adjudication. He thereupon adjourned the hearing of the reference to 29 August 1966 to be before him. At the several hearings before Sri Meher and Sri Powar the petitioners appeared representing the majority of the workmen of respondent 2 who were their members, while the other workmen appeared through the General and Engineering Employees' Union, respondent 3.

3. By notification dated 16 August 1966, published in Part XL of the Maharashtra Government Gazette dated 25 August 1965, the Government of Maharashtra appointed respondent 1 as an industrial tribunal. According to the petitioners, no order transferring the said reference to respondent 1 was communicated to the petitioners nor was any such order published in the gazette. The petitioners, accordingly, remained under the impression that Sri Powar continued to be seized of the said reference.

4. On 29 August 1966 one V. B. Pethe, an official of the petitioner-union, went to the Court of Sri Powar but found that the said reference was not mentioned in the cause list for that day placed outside the Court room and further that Sri Powar was on casual leave. Pethe accordingly thought that another date would be fixed for hearing and went away. The next day was a public holiday. On 31 August 1966 Sri H. K. Sowani, the learned advocate for the petitioners came to learn that the said reference had been fixed for hearing before respondent 1 on 29 August 1966 and that on the same day it was heard and the hearing concluded. Thereupon the petitioners made an application on the same day before respondent 1 for fixing a date for hearing of the said reference. In the said application it was urged by the petitioners that there was no intimation given to them about the transfer of the said reference to respondent 1 that on the date fixed for hearing the said Pathe had come to the Court of Sri Powar but had found that the said reference was not on the cause-list placed outside the Court; that the petitioners had not knowledge when the said reference could be taken for hearing before respondent 1 on 29 August 1966; and that as no notice was received by the petitioners about the transfer of the said reference before respondent 1 or of the hearing before him, they could not remain present at the hearing. It was further urged in the said application that respondent 1 had not

yet made and signed the award and, accordingly, no award should be made until an opportunity was given to the petitioners to be heard. By an order passed on the same day, the said application was rejected by respondent 1 on the ground that it should have been possible for the representative of the petitioners to appear before respondent 1 had they made inquiries on that day from the tribunal before whom the matter was originally fixed on that day and that it was not necessary for respondent 1 to give any notice of hearing to the petitioners as the tribunal was entitled to proceed with the hearing on the day which was already fixed. It was further stated in the said order that no such grievance was made on behalf of the other union, namely, respondent 3 or 2, and that both of them had made their submissions in the matter and the hearing was closed and could not be reopened. In stating that the representatives of the petitioners did not make inquiries on 29 August 1966 from the tribunal before whom the matter was originally fixed on that day for hearing, namely, Sri Powar, respondent 1 appears to have overlooked the fact that on that day Sri Powar was on leave. It is also significant that at the hearing on 29 August 1966 the learned advocate who was appearing on behalf of the State of Maharashtra was also not present which would go to show that he was also not aware of the reference being transferred to and of the hearing before respondent 1. In fact, it is expressly averred in the petitioner that the advocate for the Government of Maharashtra was also not aware that respondent 1 tribunal had fixed the hearing of the reference on 29 August 1966 and he, therefore, did not remain present on that day.

5. The relevant section of the Industrial Disputes Act is S. 33B. Under Sub-section (1) of S. 33B power is conferred upon the State Government by order in writing to withdraw any proceeding under the said Act pending, inter alia, before an industrial tribunal and transfer the same to another tribunal for disposal of the proceeding. The reasons for passing such order are to be stated in the order. It is the case of the petitioners that no order has under S. 33B(1) has been passed by the Government and that the said reference was transferred to respondent 1 without the necessary order in that behalf being made under the said S. 33B(1). No return controverting any of the facts stated on the petition has been filed on behalf of any of the respondent and, accordingly, all the facts stated in the petition must be deemed to be admitted. In the absence of any order under S. 33B(1) it was not competent for respondent a to assume any jurisdiction and proceed with the hearing of the said reference. We have, however, been informed by learned counsel for the respondents that an order under S. 33B(1) was in fact passed in this case and that it was published in the Maharashtra Government Gazette in September 1966, that is, after the hearing of the said reference was concluded. A copy of such order has not been produced before us. Even assuming that any such order was passed, when S. 33B(1) requires an order to be made in writing containing the reasons for transferring any proceedings from one tribunal to another, what is contemplated is that the said order must be communicated to the parties to the said proceedings, since the order of transfer

would affect the parties to such proceedings. Parties to a proceeding are entitled to know before whom the proceeding is going to be heard and before whom they have to appear and argue their case. In this connexion, reference may also be made to rules 14 and 19 of the Industrial Disputes (Bombay) Rules, 1957. These rules provide as follows :

"14. Place and time of hearing. - The sittings of a board, court, labour court, tribunal or of an arbitrator shall be held at such times and places as the chairman or the presiding officer or the arbitrator, as the case may be may fix from time to time and the chairman, presiding officer or the arbitrator, as the case may be, shall inform the parties of the same in such manner as he may deem fit."

"19. Form of notice and summons. - (1) Notices to the parties and summonses to witnesses to appear before a labour court or tribunal shall be in forms X and XI respectively.

(2) A summons issued by a board or court shall be in form XII.

(3) A notice or summons issued by a board, court, labour or tribunal may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the board, court, labour court or tribunal, which the board, court, labour court or tribunal thinks necessary for the purposes of such investigation or adjudication."

6. Under S. 33B(1) when a proceeding is transferred from one tribunal to the other tribunal, the tribunal to which the proceeding is so transferred may either proceed de novo or form the stage at which the proceeding is so transferred subject to any special direction which may be given to it in the order of transfer. It is, therefore, all the more necessary that notice of the date fixed for hearing before the tribunal to which any proceedings are transferred under S. 33B should be given to the parties to those proceedings under the said rule 19. Admittedly no notice of the transfer of the said reference and of the hearing before respondent 1 was given to the petitioners or the workers whom they represented. In these circumstances, the order of respondent 1 refusing to give an opportunity to the petitioners who represented a majority of the workmen of respondent 2 cannot be sustained and must be set aside. Though no return is filled on behalf of the respondents, we are informed by learned counsel appearing on behalf of respondent 1 that respondent 1 has signed the award and has submitted the same to the Government. In this event, the award, if any, made by respondent 1 in the said reference must also be set aside.

7. Before parting with this case, we may mention that in order to ascertain what transpired on 29 August 1966 we had the occasion to peruse the roznama of the tribunal. We found that none of the entries therein are signed or initialed by the presiding officer. The entry under the relevant date 29 August 1966 is as follows :

"Sri P. B. Sawant with Sri P. R. Purav, advocate for the company.

Sri S. R. Khanolkar for the General Engineering Employees" Union.

No appearance for the second union.

No appearance for the Government.

Preliminary point regarding maintainability of reference was argued."

8. After that follows the words "matter adjourned to 5 September 1966." These words, namely, matter adjourned to 5 September 1966," are scored out and in their place the words "matter decided" written. It is desirable that all entries in the roznama in industrial matters should be signed by the presiding officer and all corrections or alterations therein should be signed or initialled by him. Not doing so would leave a scope to the parties to make allegations which this Court exercising its supervisory jurisdiction under Art. 227 may find difficult to decide on affidavits.

9. In these circumstances, we set aside the said order dated 31 August 1965 passed by respondent 1 as also any award which may have been made by him in the said Reference (I.T.) No. 93 of 1965 and direct that the said reference should be heard by him afresh, after serving upon the parties a fresh notice of hearing.

10. There will be no order as to costs of this petition.