

(1976) 04 KL CK 0005
In the High Court Of Kerala

F.A.C.T. Employees" Association

APPELLANT

Vs

F.A.C.T. Limited and Others
 K.P Abdul Rahiman and
Others Vs F.A.C.T. Limited and Others

RESPONDENT

Date of Decision : 13-04-1976

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10, 10A, 11, 15, 17

Citation : (1977) 1 LLJ 182

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Judgement

T. Kochu Thommen, J.—Exhibit PI award is challenged in these two original petitions. An industrial dispute arose between Fertilisers and Chemicals Travancore Ltd., Udyogamandal (hereinafter referred to as the company) and its workmen represented by eight unions. The Government of Kerala referred the dispute by Ext. RI dated 17-6-1972, u/s 10 of the Industrial Disputes Act, 1947 (herein after called the "Act"), to the Industrial Tribunal, Calicut. The issues referred are: (I) Production bonus. (2) Annual bonus for 1970-71. (3) Staffing of IV stage plants and service departments. (4) Reorganisation of chemical control and instrumentation departments. (5) Promotion policy. (6) Review of agreement relating to personal assistants and stenographers. (6) Deployment of surplus personnel. (8) Common pool of helpers. (9) Disciplinary action against workmen suspended in connection with strike. The award of the Tribunal dated 31-7-1975 was received by the Government on 29-8-1975. It was published in the Gazette dated 30-9-1975 in accordance with Section 17 of the Act and it became enforceable in terms of Section 17A on tin expiry of 30 days from the date of its publication.

2. The petitioners in O.P. No. 5805 of 1975 are workmen of the company, but they claim to be not members of any union. Their complaint is that they did not receive any notice of the proceedings in accordance with Rule 20(2) of the Kerala Industrial Disputes Rules, 1957 (hereinafter referred to as the "rules"). It is

contended that they are parties to the dispute, being bound by the award u/s 18(3)(d), and consequently are entitled to notice. The absence of such notice, according to them, vitiates the award. I shall deal with this petition last.

3. The petitioner in O.P. No. 5321 of 1975 is the 3rd union in Ext. RI reference. Its complaint is that the Tribunal was not justified in passing an ex pane award and it exceeded its jurisdiction ; The Tribunal had not applied its mind to the merits of the points in dispute ; the award is vitiated by errors apparent on the face of the record ; and the award is arbitrary and perverse.

4. Shri P. Balagangadhara Menon, counsel for the petitioner, submitted with much force and erudition that, in view of the circumstances which prevailed during the pendency of the dispute, the Tribunal ought not to have proceeded in the absence of the union. A senior Government Officer was mediating between the company and the unions. Between 1972 and 1975 a number of conferences were held, beginning with the conference which took place in Trivandrum in the presence of the Minister for Labour on 28-6-1972 and ending with the conference in Delhi in the presence of the Minister for Petroleum and Chemicals on 12-7-1975. In view of all those discussions which took place with a view to settling the points in dispute outside the Tribunal, the Tribunal was not justified in passing an ex parte award. Shri P. K Kurian, counsel for the company, submitted with equal force and learning that the Tribunal was perfectly justified in passing the award ex parte. In fact, that was the only course open to the Tribunal. Shri Kurien has drawn my attention to various documents in support of this contention.

5. Exhibit R5 dated 28-6-1972, signed by the Labour Commissioner, is a record of the discussions which took place in the room of the Minister for Home at Trivandrum. This shows that it was agreed between the management and the unions that they would enter into discussions for the purpose of settling the disputes between them and for moving the Tribunal to pass an award in terms of such settlement. Exhibit R6 dated July 5, 1972 is a letter sent by the petitioner to the company saving "...we are not parties to the records of discussions in the room of Minister for Home Affairs on June 28, 1972 and as such they are not binding on us." Exhibit R7 dated July 24, 1972 is a letter sent by the petitioner to the management saying, "In the referendum conducted by the three unions on the proposals of the Government for a settlement made on the 28th June, 1972 employees rejected them and only 124 accepted the same." The mediator deputed by the Government, Shri Thomas Oommen, wrote to the company on 5-7-1973 stating, "I have received a letter from Sri S.C.S. Menon to the effect that after 15th of this month, they do not intended to participate in the mediation." Sri S.C.S. Menon referred to in this letter is the president of the petitioner-union. These letters seem to indicate the uncompromising attitude of the petitioner.

6. Shri Balagangadhara Menon also contends that three of the issues which had been referred to the Tribunal had already been settled between the parties under

Ext. R9 which was confirmed by Ext R11. He states that the award of the Tribunal is vitiated in so far as it had adjudicated upon the three points already settled. Shri Kurian, on the other hand, points out that neither Ext. R9 dated 20-9-1973 nor Ext. R11 dated 22-12-1973 (which confirmed Ext R9; includes any of the issues referred to the Tribunal. Exhibit RIO dated the same day as Ext. R9 reads :

The management and unions agree that they will try to come to a settlement by mutual negotiations, not later than 31-12-1973, on all the issues referred for adjudication to Industrial Tribunal, Calicut and which have been left to the mediation of Shri Thomas Oommen, so that the Tribunal could be moved for an Award in terms of this negotiated settlement.

(italics supplied)

This indicates that Exts. R9 and R11 did not cover the points of dispute referred to the Tribunal, It further indicates the desire of the parties to settle these issues also amicably, and then request the Tribunal to pass an award in terms of such settlement. Exhibit R12 dated 5th July, 1974 was sent to the unions by the management categorically asserting that none of the issues referred by the Government to the Tribunal for adjudication had been settled or intended to be settled under Exts. R9 and R11. This assertion does not appear to have been controverted by the petitioner.

7. A reference made to a Tribunal by the Government u/s 10 confers upon the Tribunal jurisdiction to adjudicate on the issues referred. Section 20(3) of the Act says that the proceedings before a Tribunal commence on the date of the reference of the dispute and end on the date on which the award becomes enforceable u/s 17A. A reference u/s 10 thus sets in motion adjudication proceedings and they cannot stop except by the passing of an award. A reference once made cannot be cancelled or withdrawn by the State of Bihar Vs. D.N. Ganguly and Others, . The Tribunal cannot refuse to adjudicate on the dispute and it cannot dismiss the dispute for non-prosecution. It has of necessity to make an award and forward the same to the Government. An award once published, and after 30 days have expired from the date of its publication, is final and enforceable; and it shall not be called in question by any Court in any manner whatsoever (Section 17 read with Section 17A). Consequently Ext. PI award is beyond challenge except in proceedings before this Court under Articles 226 and 227 or in appeal before the Supreme Court. It may be mentioned at this stage that the petitioner in O.P. No. 5321 of 1975 did attempt to challenge the award before the Supreme Court by seeking special leave under Article 136 of the Constitution, albeit without success. This is an aspect of the matter which has to be borne in mind, but it does not as such affect the jurisdiction of this Court under Articles 226 and 227. Haridas Malakar and Others Vs. Jay Engineering Works, ; The Board of Trustees of the Cochin Port Trust Vs. The Workmen of the Cochin Port Trust and Another, ; S.L. Emmatty, Proprietor, Jai Hind Motor Service, Ernakulam Vs. C. Venkataswami Naidu and Others, ; and Management of Western India Match Company, Ltd., Madras (WIMCO) v.

Management of Western India Match Company, Ltd. Vs. Industrial Tribunal and Another, .

8. Exhibit R2 is the order sheet of the Tribunal. It is a long chronicle of adjournments caused by the absence of the unions. It shows that the management was represented by counsel on 6-7-1972 when the case stood posted. But the unions were absent, although notices had been issued to them on 20-6-1972. The case was, therefore, adjourned to 20-7-1972, after issuing registered notices to the unions. On 20-7-1972 there was no sitting and the case was consequently adjourned to 19-8-1972. On that day the unions, despite the registered notices, were absent and were, therefore, declared *ex parte*. The Tribunal issued disposal notices to the unions and the case was posted to 6-9-1972. The case was then successively adjourned to various dates, on none of which was the petitioner present. Ultimately the management filed its affidavit on 8-5-1975. The case was then adjourned to 11-6-1975 for hearing. Even on that date the unions were absent and the case was again posted to 23-6-1975 for award. On that day the Tribunal, instead of passing an award, adjourned the case to 9-7-1975 after declaring the unions *ex parte* once again and after again issuing notices of disposal by registered post. These notices were duly acknowledged, but none of the unions was present on 9-7-1975. The unions being absent on that day also, the petitioner-union and unions 1 and 4 to 7 were again declared *ex parte*. Unions 2 and 8 were declared *ex parte* on 22-7-1975. The case was at long last posted for hearing to 26-7-1975. The management was heard on that day and the case was posted for award. As stated earlier, the award was made, was sent to the Government, was published, and became enforceable in terms of Section 17A. The long list of postings in Ext.R2 indicates that the petitioner had persistently and deliberately kept away from the proceedings of the Tribunal. Not even once did the petitioner appear before the Tribunal. Not even once did the petitioner file an application before the Tribunal to be allowed to adduce evidence and argue its case.

9. It is contended by counsel for the petitioner that the Tribunal acted without or in excess of jurisdiction in making an *ex parte* award. The meaning of the expression "*ex parte*" has been considered by the Supreme Court in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, . Referring to a judgment of Wallace, J. in *Gokarakonda Venkatasubbiah Vs. Daliparthi Lakshminarasimham*, , the Supreme Court stated that "*ex parte*" only means in the absence of the other party. The Court was considering the scope of Order IX of the C.P.C. and the relevant rules under that order. This is what the Court says:

Of course the fact that it is proceeding "*ex parte*" will be recorded in the minutes of its proceedings but that is merely a statement of the fact and is not an order made against the defendant in the sense of an "*ex parte*" decree or other "*ex-parte*" order which the Court is authorised to make. All that Rule 6(1) (a) does is to remove a bar and no more. It merely authorises the Court to do that which it could not have done without this authority, namely, to proceed in

the absence of one of the parties.

The declaration of ex parte made by the Tribunal on 9-8-1972, 23-6-1975 and 9-7-1975 are thus mere adjournments of the case to be heard in the absence of the petitioner, and not orders or decisions.

10. The Tribunal is, however, clothed with the necessary powers to decide a case ex parte, if any of the parties is absent without sufficient cause. Section 11 says:

11. (1) Subject to any rules that may be made in this behalf, an Arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the Arbitrator or other authority concerned may think fit.

(italics supplied)

Sub-section (3) of this section says that the Tribunal shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely : "(a) enforcing the attendance of any person and examining him on oath ; (b) compelling the production of documents and material objects ; (c) issuing commissions for the examination of witnesses ; (d) in respect of such other matters as may be prescribed." (italics supplied). The section thus confers upon the Tribunal sufficient authority to regulate its proceedings as it may think fit, subject to the rules made in this behalf. In such matters, the Tribunal has the powers of a civil Court, including its inherent powers, in so far as they are applicable and not inconsistent with the Act or the Rules See the decision of this Court in O.P. No. 4024 of 1975. See also Dhenkanal Municipality v. Industrial Tribunal 1974 i. L.L.J 44 at 49 (Orissa). Rules 22 and 23 which are made in this behalf may now be read :

22. Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex parte : It without good cause shown, any party to proceedings, before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed as if he had duly attended or had been represented.

23. Setting aside ex pane decision: (1) The Board, Court, Labour Court, Tribunal or Arbitrator may for sufficient cause set aside after notice to the opposite party the ex. pane decision either wholly or in part on an application made within fifteen days of the ex parte decision. The Board, Court, Labour Court, Tribunal or Arbitrator may extend the time on sufficient cause being shown.

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Rule 22, as the heading (see Craies on Statute Law, 7th Edn., P. 207, on "heading" as a guide to interpretation), indicates, empowers the Tribunal to proceed ex parte if a party, without good cause, fails to attend the proceedings. The absence of such a party shall not hinder or affect the progress of the proceedings. Rule 23, as the heading again indicates, enables the Tribunal to set

aside an ex parte decision if sufficient cause, is shown by the party for its absence. A decision includes an award which, as defined u/s 2(b), "means an interim or a final determination of any industrial dispute or of any question relating thereto". If power to proceed ex parte, i.e., in the absence of a party?, as if the party was present, was not specifically conferred by Rule 22, the Tribunal would be incompetent to make an award on merits without hearing all the parties Rule 22 not only authorises the Tribunal to proceed in the absence of a party, but it also creates a fiction which enables the Tribunal to presume that all the parties are present before it, although in fact it is not true, and thus make an ex parte award. Rule 22 is a deeming provision which enables the Tribunal to imagine a state of affairs which is untrue.

11. Referring to the object of a deeming provision, Viscount Dunedin in AIR 1930 54 (Privy Council) . See also The Queen v. The County Council of Norfolk [1891] 60 LJ. Q B.D. 379 states :

Now when a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were.

In The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, , this is what the Supreme Court says :

When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

The Court then refers the well-known passage of Lord Asquith in East End Dwellings Co Ltd. v. Finsbury Borough Council [1952] A.C. 109 at 132-133 (B) which reads :

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

12. The Tribunal may imagine that the absentee is present, and having done so, it may give full effect to its imagination and carry it to its logical conclusion. The Tribunal has to bear in mind the purposes for which the fiction is created and has to give effect to them. Obviously the intention of Rule 22 is to enable the Tribunal to imagine that a person is present, although he is in fact absent ; and to further imagine that, although present, he is unwilling to adduce evidence or argue his case. The Tribunal then has of necessity to pass an award on the basis

of the evidence placed before it by the party that in fact participated in the proceedings This is the object of the fiction expressed by the words "as if he had duly attended".

13. In the present case the Tribunal had no alternative but to pass an award on the basis of the evidence and arguments of the management. Of course, this does not mean that the Tribunal could have shut its eyes to the intrinsic character of such evidence and blindly put its imprimature to it. It had to apply its mind like any other judicial officer who examines evidence and hears arguments before forming conclusions. The Tribunal had to focus its judicial mind on the merits of the points in dispute, impartially, dispassionately and objectively.

14. In *Dawood Khan Vs. Labour Court and Another*, at 612, the Andhra Pradesh High Court had occasion to consider this aspect of the question, is what the Court says :

The absence of a party does not entail the consequence that an award will straightaway be made against him. It is still the duty of the presiding officer of the Labour Court to go into the merits of the dispute and give such findings as he can on the material placed before him.

In *Har Prasad Gupta Vs. State of Uttar Pradesh*, at 608, the Allahabad High Court says?

In my opinion, this rule merely permits the Labour Court to proceed *ex parte* against party who fails to file a written statement, but it does not empower it to decide the matter without going into the merits of the case.

A rule which is similar, though not identical, to Rule 22 was considered by the Supreme Court in *Agra Electric Supply Co., Ltd. Vs. The Labour Court, Meerut and Another*, at 5 Referring to Rule 16(1) of the Uttar Pradesh Industrial Disputes Rules, the Court says?

That provision, which clearly enjoins the Labour Court or Tribunal in the circumstances mentioned therein "to proceed with the case in his absence," either on the date fixed or on any other date to which the hearing may be adjourned coupled with the further direction "and pass such order as it may deem fit and proper," clearly indicates that the Tribunal or Labour Court should take up the case and decide it on merits and not dismiss it for default.

15. But the Tribunal is not burdened any more than a civil Court is when it passes a decree in the absence of one or more parties. This Court had occasion to refer to the responsibilities of a civil Court in passing an *ex parte* decree. In *Kochuvelu v. Varkey* (1968) KLT 462, this Court stated :

Even though the defendant is *ex parte*, the duty is still there, on the part of the plaintiffs to prove & *prima facie* case in support of their claim. It is the duty of the Court to consider the interest of the absent party and not to pass a decree except on proof by the plaintiff that he is entitled to that decree. In the present

case it was the duty of the Court to have warned the plaintiffs that in the nature of the right claimed by them, they had a duty to produce good evidence in support of it.

(italics supplied) (head notes)

This is the general principle of law applicable to all Tribunals and Courts. The powers of an Industrial Tribunal are in one sense wider than those of a civil Court, for it can, with a view to establishing industrial peace, even disregard contractual rights and obligations and apply in their place principles of justice, equity and good conscience : *ex acquo at Niemla Textile Finishing Mills Ltd. Vs. The 2nd Punjab Industrial Tribunal*, .

16. The Tribunal is not, however, saddled with the additional responsibility to embark on an independent research and investigation of its own to collect materials for adjudication of the disputes. In fact, such procedure is alien to our system of jurisprudence. The Tribunal in the present case, circumscribed as it was in the absence of the petitioner and other unions, had to examine critically the data placed before it by the management and pass such orders as it thought fit. So long as the Tribunal has applied its mind fully to the statements and documents placed before it by the management before making the award, although *ex parte*, such award cannot be assailed for any of the reasons mentioned by the petitioner. My attention has been drawn to the various questions dealt with by the Tribunal on the basis of the schemes, proposals and other documents prepared by the management in regard to the points in dispute. The Tribunal had no yards-stick to verify the fairness or otherwise of such schemes and offers, for the unions had not submitted any claims whatsoever before the Tribunal. To what extent were the demands of the unions met by the schemes and other offers submitted by the management, the Tribunal had no means to assess in the absence of any assistance whatever from the unions ; except that the Tribunal knew that these schemes and offers conferred on the workmen certain benefits, and to reject them was to deprive the workmen totally of such benefits. It is contended that the Tribunal did not specifically state in regard to each of the points that the offer of the management was just and fair. This is sought to be held out as example of its non-application of the mind and the resultant unjust award. In my view, the award has to be judged, not by the expressions used, but by its intrinsic merits; *H.H, Factory Employees" Union V.H.H. Factory Ltd. 1971 II L.L.J. 222 (para 30) Delhi*. In the circumstances, I am not impressed by the argument that the award is unfair or unjust or that the Tribunal has acted without or in excess of jurisdiction or failed to apply its mind.

17. The Tribunal had a responsibility to proceed with the proceedings as expeditiously as possible this is in fact what Section 15 enjoins it to do. The proceedings, on account of the non-participation by the unions, lasted well over three years. It was only at the end of the period, after the petitioner was thrice declared *ex pane* and after registered notices were twice issued to it, that the Tribunal, as it would seem to appear from the proceedings, decided, not without

reluctance, to make an ex pane award.

18. The petitioner could have appeared before the Tribunal and participated in the proceedings as soon as it knew that it was declared ex pane : Venkatasubbiah v. Lakshminarasimham AIR 1925 Mad 1274 ; Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . The award was made as warranted by the Act and the rules, but even so the petitioner could have, if it chose to do, had the award set aside in terms of Rule 23, provided it had sufficient cause to show for its absence. No such application was filed before the Tribunal. If the petitioner had genuinely felt that some of the issues referred to the Tribunal had in fact been settled under Exts.R9 and R11, it could have moved the Tribunal to pass an award respecting those issues in terms of the settlement: The State of Bihar Vs. D.N. Ganguly and Others, at 640. Even after the award was submitted to the Government, the petitioner could have moved the Government not to publish the award in regard to the issues alleged to have been settled: The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another, at 651-652 (S.C). None of this the petitioner had done.

19. The jurisdiction of this Court under Articles 226 and 227 of the Constitution is a discretionary jurisdiction. The powers, although wide, have to be sparingly exercised and only in accordance with the well-established norms. A person whose conscience is not clear or whose hands are not clean or who has been guilty of laches and deliberate omissions is not entitled to invoke the jurisdiction of this Court under Articles 226 and 227 : Moon Mills v. Industrial Court, Bombay AIR 1967 S.C. 1450 The Legislature has intended the award to be final and that it shall not be called in question by any Court in any manner whatsoever. This intention shall not be defeated by means of proceedings under Article 226 and 227, except in cases where the award of the Tribunal is vitiated by errors of law apparent on the face of the record and has resulted in such grave miscarriage of justice as to disturb the conscience of this Court. If the award of the Tribunal is in violation of the principles of natural justice, or it is perverse or arbitrary in the sense that it is without any evidence whatsoever or extraneous considerations have gone into the making of the award, the jurisdiction of this Court can be invoked with success. But except in such and similar circumstances, this Court shall not exercise its powers for the purpose of invalidating an award which is intended to be final and beyond question. Regarding the nature of the jurisdiction under Articles 226 and 227, see AIR 1975 1297 (SC); Syed Yakoob Vs. K.S. Radhakrishnan and Others, ; Union of India v. Gael [1964-I L.L.J. 38] ; Agnani v. Badrt Das and Ors. [1963 I L.L.J. 684 at 688;] Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, ; Workmen of Blundell Eomite Paints Ltd. Ernakulam v. Blundell Eomite Paints Ltd Ernakulam ILR 1973 Ker 478 at 482 ; Workmen of Rice and Oil Mills (Rice, Oil and Mica Workers Union) Vs. Industrial Tribunal and Others, . In the circumstances, I am of the view that Ext PI award is not vitiated by any of the errors mentioned by the petitioner in Q.P. No 5321 of 1975. The original petition is, therefore. unsustainable.

20. I shall now deal with the question raised by the petitioners in O.P No. 5805 of 1975. Their main grievance is that they were not given notice under Rule 20(2) which reads as follows :

20. XXX XX XX (2) Where there are numerous persons as parties to any proceedings before a Board, Court, Labour Court or Tribunal or an Arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be shall, where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

xx xx xx

These petitioners contend that they do not belong to any union at all, but are bound by the award in terms of S 18(3)(d) being so bound, they claim to be parties to the disputes and to be entitled to notice under Rule 20(2). I shall now read the relevant portions of the section:

18. Persons on whom settlement and awards are binding ?

xx xx xx (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal, which has become enforceable shall be binding on?

(a) all parties to the industrial dispute ;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal as the case may be, records the opinion that they were so summoned without proper cause ;

xx xx xx (d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of dispute, and all persons who subsequently become employed in that establishment or part thereof.

21. The original parties to an industrial dispute are those parties that are mentioned in the order of reference and none other. But parties may be summoned to appear in the proceedings before the Tribunal in terms of Section 18(3)(b). It has been held that the Tribunal has the inherent power to implead persons as parties if the Tribunal is duly moved for such purpose. In Radhakrishna Mills Ltd., Peelamedu, Coimbatore Dt. Vs. The Special Industrial Tribunal, Madras and Others, , the Madras High Court referred to Section 18(b) as it stood at the relevant time and said :

...Section 18(b) of the Industrial Disputes Act necessarily implies that parties other than the original parties to an industrial dispute can be summoned as parties to the proceeding. Therefore, by necessary implication there is vested in

the Industrial Tribunal a power to add any person or establishment whose presence is necessary or proper for the due and just adjudication of the dispute and make them parties to the proceeding. Clause (b) of Section 18 when it speaks of all other parties summoned to appear in the proceedings as parties to the dispute, necessarily implies that some persons other than the original parties to the dispute or persons whom the State Government has subsequently added u/s 10(5) can also be summoned in order that the award may become enforceable and binding on those parties also.... In my view Section 18, Clause (b), gives sufficient authority to the Tribunal for the addition of parties. It is similar to Order 1 Rule 10(2), of the CPC ...", See also Ganesh Das Ram Gopal Vs. The Government of the State of Uttar Pradesh and Others, .

In *The Manager, Hotel Imperial Vs. The Chief Commissioner and Others*, , the Supreme Court had occasion to consider an aspect of this question. The Court said :

That, however, did not preclude the workmen if they wanted to be represented by any other union, to apply to the Tribunal for such representation or even to apply for being made parties individually.

These observations indicate that the Tribunal could very well have been moved by the petitioners for getting themselves impleaded as additional parties u/s 18(3)(b). This the petitioners had failed to do.

22. The management has strongly controverted the contention that the petitioners do not belong to any union. In fact it has been averred that the petitioner belongs to the petitioner-union in O.P. No. 5321 of 1975. In these proceedings it cannot be decided whether or not the petitioners are members of any union. It is a disputed question of fact which should have been, if at all, resolved before the Tribunal. In any case, the petitioners who had failed to exhaust the statutory remedy provided u/s 18(3)(b), cannot move this Court to set aside an award for the reason that no notice was issued to them.

23. I fail to see how the petitioners are entitled to any notice. Although they are bound by the award u/s 18(3)(b), they cannot be deemed to be parties to the dispute under either Clause (a) or Clause (b) of Sub-section (3) of Section 18. Consequently they are not entitled to any notice under Rule 20(2) which is intended solely for the benefit of parties.

24. Assuming that the petitioners had a right to get notice under Rule 20(2), I fail to see how they were in fact aggrieved by the absence of a formal notice. The adjudication proceedings which lasted over three years were common knowledge. All the workmen of the company, presumably including the petitioners, had struck work on 17-5-1972. It was admittedly a total strike. Subsequent to Ext. R1 reference, an order was made by the Government u/s 10(3) prohibiting the continuance of the strike. Consequently the strike was withdrawn and work was resumed. It is inconceivable in such circumstances that the petitioners who were full participants in all the activities connected with the

controversy were ignorant of the proceedings before the Tribunal. By no stretch of imagination can it be stated that they were taken by surprise. This Court aids the vigilant. He who deliberately remained aloof or indifferent or recalcitrant, cannot now be heard to say that he is aggrieved because no notice as contemplated under Rule 20(2) was issued to him: *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, . I am of opinion that the petitioners are not in any view of the matter, aggrieved by the absence of notice under Rule 20(2), There is no equity in their favour. The other grounds urged in this petition-namely, excess of jurisdiction and non-application of the mind-are also without merits in the light of what I have stated in connection with O.P. No. 5321 of 1975. This original petition is unsustainable.

25. I dismiss both the original petitions. The parties will bear their respective costs.