

(1955) 08 BOM CK 0012

In the Bombay High Court

Case No : Appeal No's. 55 and 56 of 1955 and Miscellaneous No. 80 of 1955

Firestone Tyre and Rubber Co. of India Ltd.

APPELLANT

Vs

K.P. Krishnan and Others

RESPONDENT

Date of Decision : 30-08-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 12, 12(4), 12(5), 22

Citation : AIR 1956 Bom 273 : (1955) 57 BOMLR 1138 : (1955) ILR (Bom) 1095

Hon'ble Judges : Chagla, C.J.;Desai, J

Bench : Division Bench

Advocate : S.D. Vimadalal, for the Appellant; K.T. Sule, M.M. Vakil and G.N. Joshi, for the Respondent

Judgement

Chagla, C.J.—This appeal raises a very important question as to the power of Government to refer or not to refer a dispute to a Tribunal under the Industrial Disputes Act u/s 12(5).

2. On 17-11-1953 the Union representing the workers of the appellant company gave an intimation to the company that their workers made certain demands with regard to gratuity, paid holidays, classification of certain workmen and payment of bonus. A copy of these demands was forwarded to the Labour Commissioner. On 6-12-1953 the Appellant company declared a bonus which was three months of the basic pay of the workers. This bonus was not accepted by the Union.

Conciliation proceedings were started on 29-4-1954 and the conciliation having failed a report was made by the Conciliation Officer on 5-7-1954. The report only dealt with the question of bonus and classification. On both those points the Conciliation Officer was of the opinion that there was considerable substance in the demands put forward by the workers. On 11-12-1954 the Government refused to refer the dispute to a Tribunal and gave as its reasons for not so referring that the workers had resorted to go-slow during the year 1952-53.

On this some of the employees of the Appellant company filed a petition which came on for hearing before Mr. Justice Tendolkar and Mr. Justice Tendolkar made an order upon the Government directing it to reconsider the matter and give proper reasons if it was still of the opinion that the matter should not be referred to adjudication. The appellants have come in appeal and the contention of the appellants has been supported by the State of Bombay.

3. Turning to the Act, there are three important provisions with regard to reference which deal with different sets of circumstances and which confer different powers upon Government. The first is Section 10(1) which gives the power to Government to refer a dispute to a Board or a Court for inquiry or a Tribunal if it is of opinion that any industrial dispute exists or is apprehended. The discretion conferred upon Government in Section 10(1) is in no way qualified or limited.

Then there is an important proviso to Section 10(1); which refers to a dispute relating to a public utility service and a notice u/s 22 has been given. There it makes it incumbent upon the Government to make a reference, but it qualifies that mandatory direction by providing that a reference need not be made if the Government considers that the notice u/s 22 has been frivolously or vexatiously given or that it would be inexpedient to make a reference.

Therefore, it is only in these two cases that Government is not bound to make a reference when the case falls under the proviso, and the two cases are that the notice is frivolous or vexatious or that the Government considers it inexpedient to make a reference. Then we come to Section 12(5) and the first thing to notice about Section 12(5) is that the question of making or not making a reference arises after conciliation proceedings have intervened; in other words, an authority under the industrial law has applied his mind to the dispute raised by the workers; and, therefore, Sub-section (5) begins by stating.

"If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor".

Therefore it is obligatory upon the Government under this sub-section to consider the report of the Conciliation Officer. The Legislature makes it incumbent upon the Government to consider this report because it is the report of an authority under the Act who has considered, as we just said, the merits of the controversy, and the Legislature required that before Government made up its mind it should consider what the Conciliation Officer had to say.

After the report is considered, if the Government is satisfied that there is a case for reference then it may make the reference, and the question that has been agitated before us is, what is the proper meaning to be given to the expression "may" used in this context.

4. It is clear that the expression "may" refers to a duty imposed upon Government. The Government undoubtedly has been given the power to make a reference, but that power has been coupled with a duty and the duty is that if on a perusal of the report Government is satisfied that there is a case for reference the duty imposed upon it clearly arises and the Government cannot refuse to discharge that duty.

In that sense, therefore, "may" has the implication of an obligation, an obligation to discharge a duty which follows upon the satisfaction arrived at on a perusal of the report.

If the Government were to say, "We have perused the report of the Conciliation Officer, we are satisfied that there is a case for reference, but we will exercise our discretion and not make a reference", in such a case it is clear that this Court would compel the Government by a mandamus to discharge its statutory duty.

The next part of Sub-section (5) makes it obligatory upon Government when it does not make a reference to record and communicate to the parties concerned its reasons therefor. It is perfectly true that the reasons given by Government are not justiciable in the sense that the Court will not consider the weight or value or the quality or even the adequacy of the reasons given by the Government. But it is equally clear that the reasons which the Government has to give under this sub-section are reasons connected with the perusal of the report and with Government not being satisfied that there is a case for reference.

It is because Government is not satisfied that there is a case for reference that the duty to refer does not arise, and what the Legislature required was that Government must give reasons why it was not satisfied that there was a case for a reference. In our opinion, therefore, the reasons must be connected with the failure on the part of Government to be satisfied that there was no case for reference.

It is equally clear that if the reasons had no connection, no bearing and no relevance to this question, then they are not reasons at all contemplated by Sub-section (5), and if there are not reasons contemplated by Sub-section (5) then it would be open to the Court to ask Government to give proper reasons which the law requires under Sub-section (4). That is exactly what Mr. Justice Tendolkar has done and, therefore, in our opinion the only question we have to consider in this appeal -- and it is a very short question -- is whether the reason given by Government for not making the reference is a reason germane to their not being satisfied that there was a case for reference.

When one analyses the matter a little further, the report which the Government considers is the report with regard to the industrial dispute and the case that the Government has to be satisfied about is the case with regard to the industrial dispute and therefore, the reasons which the Government has to give for not making a reference are reasons which are germane to or connected with the industrial dispute.

A reason which is not germane to the industrial dispute or is not connected with the industrial dispute would obviously not be the reason contemplated by Section 12(5).

5. Applying that test to the facts of this case, the only reason Government has given for not making a reference is that the workmen of the appellant company resorted to go-slow during the year 1952-53. Both Mr. Joshi for the State and Mr. Vimadalal have emphasised the fact that Government must be given a right on grounds of expediency or on grounds of public policy to refuse to make a reference & if Government is satisfied that the conduct of the employees was such as did not entitle them to the use of the industrial machinery, it was open to the Government not to make a reference.

Now that raises an extremely important question with regard to the right of the workers in the various industries to which this Act has been applied. Would it be true to say that if a worker is guilty of misconduct he should be denied the rights to which he is entitled under the industrial law? In this case, admittedly, the workers did go slow, admittedly their conduct under the standing orders constituted misconduct but would it, therefore follow that because they were guilty of misconduct they were neither entitled to a bonus nor to classification of certain workers?

In our opinion there is no connection whatever between going slow and the question of bonus. Bonus depends upon the production of an industry, it depends upon the profits made by an industry, it depends upon various computations and calculations as to what is the net profit available for distribution and how it has been distributed, and what is more, in this case the Conciliation Officer has pointed out that although for seven months of the year the workers did go slow or pursued the policy of go-slow, they made up for it in the subsequent part of the year, and the case of the workers was that the production and profits for the year 1952-53, which is the year in question, were comparable to any normal year.

Therefore, this report of the Conciliation Officer clearly shows that the policy of going slow had no connection with or bearing upon the industrial dispute which the workers had raised with regard to their claim for bonus. Even more remote is the connection with regard to the dispute about classification. It is difficult to understand how it can possibly be said that the fact that the workers behaved improperly quae their employers or quae the industry should disentitle them to the right of classification if under the industrial law they were entitled to such classification.

Therefore, judging by the two matters which were ultimately reported upon by the Conciliation Officer, viz., the question of bonus and the question of classification, -- the other two were not pressed, viz. that of gratuity and paid holidays, it is clear in our opinion that the reasons given by the Government have no bearing upon their having arrived at a satisfaction that there was no case for reference.

6. Mr. Joshi has urged upon us and Mr. Vimadalal has supported him in that contention that we must import into Section 12(5) the language of the proviso to Section 10(1), and Mr. Joshi says that even as in the case of the proviso if Government thinks it inexpedient to make a reference it has been given the power and the discretion not to make a reference, in the first place, it would be opposed to all canons of construction if we were to import the language of Section 10(1) and the proviso to Section 10(1) into the words used by the Legislature in Section 17(5). In the same piece of legislation the Legislature has advisedly used different language in Section 10(1), in the proviso to Section 10(1), & in Section 12(5) & in our opinion there is good reason & good principle why this different language is used. When Government is dealing with a dispute relating to a public utility service various considerations of public policy arise and it is only the Government that is competent to decide whether a reference should be made or not, and therefore, the Legislature used the very wide expression "expediency".

"Expediency" is undoubtedly a question of policy which the Court cannot inquire into, and therefore if the Government were to say with regard to a public utility service that it is inexpedient to make a reference it would be the end of the matter. But when we come to Section 12(5) where there is conciliation proceeding, where there is a report and where an obligation is cast upon Government to peruse that report, the Legislature did not think it proper, and in our opinion rightly so, to give such wide discretion to Government.

It limited its discretion to its satisfaction that there was no case for a reference. No question of expediency would arise in such a case. If the Government took the view that there was no case whatever on merits, that the demands of the workers were frivolous or vexatious, that merely the time of the Industrial Court would be wasted by making the reference, that the decision was a foregone one, undoubtedly all these considerations would lead to the Government being satisfied that there was no case for a reference.

But when Government applies its mind to a circumstance extraneous to the industrial dispute extraneous to the case for reference, then Government cannot rely upon the ground of expediency and say, "We will refuse to make a reference because we think it is inexpedient". That answer the Legislature has not permitted the Government to give u/s 12(5). That answer Government can only give when it deals with the proviso to Section 10(1).

7. Three authorities were referred to by counsel at the Bar and in our opinion none of them is of much assistance, in deciding the question before us. The first is a judgment of the Madras High Court in "State of Madras v. Swadesamitran Printers' Labour Union" AIR 1952 Mad 297 (A). There a petition was made for a mandamus against the State u/s 10 and the learned trial Judge Krish-naswami Nayudu J. made the order.

The State went in appeal before the learned Chief Justice and Mr. Justice

Venkatarama Ay-yar, and the Appellate Court, with respect, rightly pointed out that the case fell u/s 12 and the simple way to dispose of the matter would be to direct the Government to give reasons for not making a reference as admittedly no reasons had been given. That disposed of the matter. Then the learned Judges at page 298 went on to give an interpretation to Section 10(1) and whether "may" should be construed as "shall".

In the first place, these observations, with respect, are obiter, and in the second place we are not concerned to construe the expression "may" in Section 10(1), but we are concerned to construe the expression "may" in Section 12(5). Having construed Section 10(1) they go on to say:

"Section 12(5) gives no room for argument. It says in express and unambiguous language that on a consideration of the report of the conciliation Officer, the Government may make a reference or may refuse to make a reference".

If by these words the learned Judges wish to convey that even though Government may be satisfied that there is a case for reference there is still a discretion in Government to refuse to make a reference, with very great respect, we are unable to accept that construction of the section.

8. Then reliance was placed on a Judgment of the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, . There the Supreme Court was construing Section 10(1) and in that case a reference was made by Government and that reference was being challenged by the appellant before the Supreme Court, and it was in this connection that the learned Chief Justice at page 57 says:

"The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support Its conclusion, as if it was a judicial or quasi-judicial determination".

But these observations, with respect, cannot apply to Section 12(5) where the Legislature has made it incumbent upon Government to give reasons. Reliance is also placed on another passage at page 67:

"In such cases the Government must have the power, in order to maintain industrial peace and production, to set in motion the machinery of settlement with its sanctions and prohibitions without stopping to inquire what specific points the contending parties are quarrelling about, and it would seriously detract from the usefulness of the statutory machinery to construe Section 10(1) as denying such power to the Government".

Therefore, the Supreme Court was at pains to emphasise the wide powers of Government to refer a dispute u/s 10(1) in the interest of industrial peace. We are now being asked to canvass a converse proposition that Government has wide powers to refuse a reference in the cause of industrial peace. If the order was made in the cause of industrial peace, undoubtedly we would certainly have considered it, but neither Mr. Joshi nor Mr. Vimadalal has been able to satisfy us how the cause of industrial peace would be supported by Government refusing to

refer this dispute to adjudication.

The clear position is that on this refusal on the part of Government it would be open to the workers to strike the strike would not be illegal, although we sincerely hope they would not do so. But when the workers go to Government armed with the report of an authority under the industrial law and when that authority takes the view that the employers are recalcitrant and there is a strong case on merits on the side of the workers, it is difficult to understand how the cause of industrial peace is advanced by Government refusing to make this reference u/s 12(5).

9. The final judgment; relied on is a judgment of the Patna Full Bench in *Bagaram Tuloule Vs. The State of Bihar*, . There the Full Bench came to the conclusion that a mandamus will not be issued u/s 10(1) if the case fell under the proviso to Section 10(1) because it was left entirely to the discretion of Government whether to make an order of reference or not. The Patna High Court took the view that the word "inexpedient" used in the proviso to Section 10(1) was so wide that it conferred a complete discretion upon the Government and no mandamus could be issued to control a matter of discretion.

With respect, we are in entire agreement with the Patna High Court to the extent that if the Government were to say that it would not make a reference under the proviso to Section 10(1) because it was inexpedient, the Court will not control the action of the Government by a writ of mandamus. But to say that under no circumstances a writ of mandamus can be issued under the proviso to Section 10(1) is in our opinion, again with respect, going much too far.

If Government were to refuse to refer without satisfying the two conditions laid down in the proviso to which we have referred, then certainly a mandamus would lie to direct the Government to discharge its statutory duty. As we have already pointed out, the discretion conferred upon Government under the proviso to Section 10(1) is not absolute; it is controlled and limited by the two circumstances referred to in the proviso.

10. There are cross-objections filed by the workers of the appellant company, but they have not been pressed by Mr., Sule.

11. The result is that both the appeals, one by the State and the other by the employers, will be dismissed with costs. Cross-objections dismissed with costs.

12. Liberty to the Respondent's attorney to withdraw the sum of Rs. 500 deposited in Court, Costs awarded in the cross-objections to be set off against the costs of the appeal.

13. Order accordingly.