
(1956) 02 MAD CK 0031
In the Madras High Court

Haji A. Abdul Kader Sahib

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 20-02-1956

Acts Referred:

Citation : (1956) 1 MLJ 574

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—This is an application for the issue of a Writ of prohibition directing the second respondent the Industrial Tribunal,

Coimbatore, to forbear from proceeding with the enquiry in pursuance of the notification, G.O. Ms. No. 1256, Department of Industries, Labour

and Co-operation, dated 10th May, 1954.

2. The reference in question is under the Industrial Disputes Act and the order sought to be quashed is one which purports to refer an industrial

dispute between the workers of the Raja Beedi Branches at Venkitang, Pavaratty, Guruvayoor, Manathala and Eringapuram and the management

of the Raja Company, Chowghat, South Malabar, to the Industrial Tribunal, Coimbatore, for adjudication.

3. The following facts are necessary to be stated to understand the objection raised to the jurisdiction. The petitioner A. Abdul Kadar Sahib,

proprietor, Raja Company, Chowghat, is an exporter of beedies. The manner in which this business is conducted by the petitioner is by the

employment of contractors to manufacture beedies which he exports. The petitioner obtains in his own name, licences from the Central

Government under the Tobacco Excise Act and the tobacco which he purchases is

stored in his godowns which are licensed in his name. This tobacco and other raw materials he hands over to persons whom I would call the contractors under an arrangement, a specimen of which has been filed as Exhibit A in this case. In this document which is termed a karar the petitioner undertakes to obtain licences at his own expense in accordance with the rules framed by the Central Excise Department for stocking tobacco and manufacturing beedies. But the manufacture is to be by the other party to the contract who is named the second executant in this karar. Paragraph 3 of the karar sets out that the second executant shall at his own expense and on his own risk manufacture beedies or cause them to be manufactured with the materials which he takes over from the first executant"" (the present petitioner).

In paragraph 4 it is stated that

the second executant shall manufacture beedies or cause them to be manufactured with the tobacco he takes over from the first executant.

4. Finally in paragraph 8 it is specifically recited that

if the second executant causes the beedies to be manufactured by others, the second executant shall on his own responsibility attend to the entire

affairs in compliance with the rules and regulations framed by the Government Departments. The first executant shall not interfere with the freedom

of the second executant in attending to the affairs accordingly. The second executant alone shall always be liable for all the responsibilities in

accordance with law and the first executant shall not have any liability whatever.

5. Admittedly the second executant did manufacture beedies under this contract for the first executant, that is the petitioner before me. Certain

employees who were engaged in the manufacture of beedies by the second executant and persons constituted like him made representations

claiming increased wages, etc., to the present petitioner who denied that these claimants were employed by him or that there was any relationship

of employer and employee between himself and these workers. Exhibit A was placed before the Labour Officer who tried to conciliate this

dispute. Notwithstanding the specific terms of this agreement the Labour Officer apparently recommended to Government to refer this dispute to

the Industrial Tribunal for adjudication, and the Government have passed the order now impugned.

6. It does not need much argument to show that under the Industrial Disputes Act the existence of the relationship of employer and employee is

necessary before there can be any industrial dispute, and the existence of an industrial dispute is necessary before there can be any valid reference

by Government of such dispute to an Industrial Tribunal. When the petitioner proved, that in the present case there was no such relationship

between the petitioner and the workers, who were impleaded as third respondent, the Government in their counter-affidavit stated in paragraph 2

that

if there does not exist such a relationship (that is as employer and employee) his contention that there was no industrial dispute and that the

reference made by the Government as if there was such a dispute was without jurisdiction may be correct.

7. Nothing more has been brought before me either by the Government or by the workers to whom notices have been issued in this writ petition to

show that the relationship between the petitioner and the workers was that of an employer and employee. In these circumstances, I am clearly of

the opinion that the reference of the alleged dispute to the Industrial Tribunal is without jurisdiction and the reference is quashed. The Writ Petition

is allowed and the rule is made absolute. In the circumstances there will be no order as to costs.