

(1957) 10 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 111 of 1956 (E)

I.I. Iyyappan Mills Ltd., Trichur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-10-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : AIR 1958 Ker 139

Hon'ble Judges : M.S. Menon, J; Kumara Pillai, J

Bench : Division Bench

Advocate : T.S. Venkiteswara Iyer, C.S. Anathakrishna Iyer and P.V. Krishna Iyer, for the Appellant; K.V. Surianarayana Iyer, General (For Nos. 1 and 2), P. Balagangadhara Menon, (For No. 3), for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner is the I. I. Iyyappen Mills (Private) Ltd. Trichur. The 1st respondent is the State of Travancore-Cochin, the 2nd, the Industrial Tribunal, Ernakulam, and the 3rd, the I. I. Iyyappen Mills Workers' Union, Trichur.

2. The order impugned in this petition is Ext. B dated 17-4-1956 which reads as follows:

"Whereas Government are of opinion that an Industrial Dispute exists between the Managing Director, I. I. Iyyappen Mills Ltd., Trichur and the workmen of the above concern represented by the I. I. Iyyappen Mills Workers Union, Trichur, in respect of matters mentioned in the annexure to this order,

And whereas the said dispute had been referred for adjudication to the Industrial Tribunal, Trivandrum by order L-4-14248/55/DD dated 21-7-1955 and is pending adjudication,

And Whereas since then an Industrial Tribunal, Ernakulam, has been constituted.

And Whereas in the opinion of Government it is expedient to refer the said

industrial dispute for adjudication by the Industrial Tribunal, Ernakulam,

Now therefore in exercise of the powers conferred by Section 10(1)(c) of the Industrial Disputes Act 1947 (Central Act XIV of 1947) read with the General Clauses Act (Central Act X of 1897) Government hereby withdraw the said industrial dispute from the Industrial Tribunal, Trivandrum, and refer the said dispute for adjudication to the Industrial Tribunal Ernakulam.

Annexure

1. Whether the closure of the Oil Mill and Workshops Sections of the I. I. Iyyappan Mills Ltd., Trichur with effect from 1-7-1955 is justifiable?

2. To what reliefs are the workers entitled in case:

a. the closure is justifiable?

b. the closure is not justifiable?

3. Are the workers thrown out of employment entitled to any interim relief"?

3. The first contention urged before us is that the Government had no right to make a reference as to whether the closure was justifiable or not as the company had every right to decide whether it could carry on a business or not. This contention is stated as follows in paragraph 7 of the affidavit in support of the petition:

"The right of the employer to close down an industry is a right guaranteed by the Constitution and the matter of the closure of the aforesaid industries forming subject matter of the reference to second respondent for adjudication falls outside the purview of the Industrial Disputes Act".

4. This is a contention which we are not prepared to accept. Apparently there is a dispute as to whether the closure of the oil mill and workshop sections of the petitioner's establishment was real and bona fide or a mere act of victimisation, and it is this dispute that is covered by issue No. 1 in Ext. B. There can be no doubt that a dispute as to whether the closure of a particular establishment was real and bona fide or was only an act of victimisation can be referred to an Industrial Tribunal for adjudication u/s 10(1)(c) of the Industrial Disputes Act, 1947. If the closure was real and bona fide, it will of course be a justifiable closure but, if it is not, and spells in the realm of victimisation, it certainly will not be a justifiable closure and the workmen will be entitled to claim appropriate reliefs.

5. In *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, Venkatarama Ayyar, J.* said:

"Where the business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference thereto would, as held in *K.N. Padmanabha Ayyar Vs. State of Madras and Others*, fall outside the purview of the Industrial Disputes Act".

The case before us is one in which it has been neither admitted nor found that the closure was real and bona fide and where the matter is the subject of the most acute controversy.

6. The only other contention urged before us is as regards the power of the Government to withdraw the reference from the Industrial Tribunal Trivandrum, and refer it for adjudication to the Industrial Tribunal, Eniakulam, as was done by Ext. B. This petition was heard along with O. P. No. 112 of 1956 (E) Iyyappan Mills (Private) Ltd. Trichur v. State 1957 KLT 1171 (C) and for the reasons stated therein we must reject this contention. A copy of the said judgment will be attached hereto and treated as part of this judgment.

7. In the light of what is stated above the petition has to be dismissed and we do so with costs advocate's fee Rs. 100 to respondents 1 and 2 together and a like amount to respondent No. 3.