

(1957) 12 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 214 of 1957

Indian Aluminium Co. Ltd.

APPELLANT

Vs

Aluminium Factory Workers" Union, Alwaye

RESPONDENT

Date of Decision : 11-12-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 19, 19(3), 19(5), 19(6), 2

Citation : AIR 1959 Ker 37 : (1958) 2 KLJ 297 : (1958) 2 LLJ 403

Hon'ble Judges : K.T. Koshi, C.J.;M.S. Menon, J

Bench : Division Bench

Advocate : K.P. Abraham, George Kurian and M.M. Cheriyan, for the Appellant;
P. Balagangadhara Menon, for Respondent 1, K.V. Surianarayana Iyer, General for
Respondent 2, for the Respondent

Judgement

M.S. Menon, J.—The petitioner in this petition under Article 226 of the Constitution is the Indian Aluminium Company Limited, Alwaye, and the two respondents are the workmen of the said Company represented by the Aluminium Factory Workers" Union, Alwaye, and the Industrial Tribunal, Trivandrum.

2. The petition questions the validity of Ex. P. 2, an order of the Industrial Tribunal, Trivandrum, dated 25-4-1957. The order overruled the contentions of the petitioner regarding the maintainability of the reference and posted the case for evidence on the issue referred for adjudication, namely -

"Is the discharge of Sri M.P. Mathai justifiable? If not, to what relief is he entitled?"

3. The preliminary objections were:

1 that Mathai was not a workman as defined in the Industrial Disputes Act, 1947;

2 that Exs. P. 3 and P. 4, the awards of the Industrial Tribunal, Ernakulam, in adjudication Nos. 4 and 5 of 1951, precluded the Union from contending that he

was a workman within the meaning of that definition; and

3 that in any view of the matter there can be no reference of the issue for adjudication except after the termination of the awards, Exs. P. 3 and P. 4, as contemplated by Sub-section (6) of Section 19 of the Industrial Disputes Act, 1947.

4. Sub-section (3) of Section 19 of the Industrial Disputes Act, 1947, (omitting the two provisos thereto) reads as follows:

"An award shall, subject to the provisions of this section, remain in operation for a period of one year";

and Sub-section (6):

"Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

It is agreed that no notice as contemplated by Sub-section (6) of Section 19 has been given in respect of Exs. P. 3 and P. 4. The contention of the Union is not that the awards have been so terminated; but that the terms of Exs. P. 3 and P. 4 dispense with the necessity for any notice of termination.

5. Ex. P. 4 is an award in a dispute between the petitioner and the 1st respondent and Ex. P. 3, an award in a dispute between the petitioner and their workmen represented by the Indian Aluminium Factory Staff Association, Alwaye. In Ex. P. 4 it is stated:

"The principle that supervisors and other employees in the Company above their grade are not workmen within the meaning of the Industrial Disputes Act 1947 is accepted and accordingly the Aluminium Factory Workers' Union undertakes to exclude all such employees from their membership";

and in Ex. P. 3: The "principle that supervisors and other employees in the Company above their grade are not workmen within the meaning of the Industrial Disputes Act of 1947 is accepted and accordingly, the Indian Aluminium Factory Staff Association undertakes forthwith to exclude all such employees from their membership and inform the fact to the employees in writing".

6. It is not disputed that on the "principle" accepted in Exs. P. 3 and P. 4, Mathai will not be a "workman" within the meaning of that expression as defined in the Industrial Disputes Act, 1947. The definition at the time of Mathai's discharge and when the awards were passed was in the following terms:

"Workman" means any person employed. (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward

and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

7. It is true that the awards, Exs. P. 3 and P. 4, embody agreements reached by the parties but that does not mean that they are anything less or other than awards under the Industrial Disputes Act, 1947, the operation of which have to be determined in accordance with the provisions of Section 19 of that Act. Counsel for the 1st respondent drew our attention to the provision in the agreements embodied in the two awards to the effect that the agreements will be binding on the parties "till the thirty-first day of December 1952" and contended that in view of the said provision the awards should be deemed to have terminated, automatically, on the last day of the year 1952 and that any notice thereafter cannot but be considered as superfluous and unnecessary.

8. Section 19 does not visualise the automatic termination of any award passed under the Industrial Disputes Act, 1947, and so long as Exs. P. 3 and P. 4 are awards under that Act, the provisions of "Section 19 should control their operation and decide the issue.

9. In the light of what is stated above, Ex. P. 2, the award impugned before us, is unsustainable and has to be quashed. Order accordingly.

10. Sub-section (5) of Section 19 -- "Nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the awards" -- deals with awards which settle questions once for all. Halder deals with the Sub-section as follows:

"All awards need not have periods of operation. This depends upon the nature of facts and circumstances of the case. Thus awards deciding questions of personal rights e.g., victimisation or questions like lockout or strike pay, reinstatement etc., must be regarded as awards having decided questions once for all and hence necessarily there is no question of any period of operation of such awards".

(Evolution of Labour-Management Relations and the Indian Law of Industrial Disputes, P. 208).

There is no contention before us that this subsection is attracted and so it is not necessary to evaluate the reaction of that provision to the facts of this case.

11. The petition will stand disposed of as above. No costs.

12. We make it clear, as desired by counsel for the 1st respondent, that we express no opinion on the first and second objections specified in paragraph 3 above and that nothing in this judgment will in any way preclude the issue of a notice under Sub-section (6) of Section 19 terminating Exs. P. 3 and P. 4, and further proceeding according to law.