

(2004) 04 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No's. 14333 of 1998 and 14757 of 1999

Indian Bank Employees' Association

APPELLANT

Vs

General Manager (Administration), Indian Bank Central Office
and Others

RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2004) 3 LLJ 304

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; Kalyanaraman, for Aiyer and Dolia for Respondent Nos. 1 to 3 and J. Madanagopal Rao, in W.P. No. 14757/1999, for the Respondent

Judgement

Prabha Sridevan, J.—The writ-petitioner is a trade union and not a majority union. The Indian Bank whose employees they were minority

trade union was the petitioner-union was the first nationalised bank to introduce Automated Teller Machine (ATM). It was first introduced at the

Harbour Branch. Then subsequently at Royapettah, Mylapore and Anna Nagar Branches. Settlements were also entered into with respect to

individual branches between the respondents-bank and the recognised union whereunder it was agreed to pay special allowance to two clerical

staff attending to ATM on permanent basis based on branch seniority. This practice is continuing in the aforesaid branches till date. At that time

ATMs were not interlinked to the central computer and were operated by the particular branch where the ATMs were installed. Thereafter the

Indian Bank decided to have a network at Anna Nagar branch and to introduce ATM which is said to have been installed another in the

Pursawakkam branch and yet another ""After Hour Depository"" (AHD) proposed for Mylapore branch. Both to be installed at T.Nagar branch.

The problem now exists before us relates to T. Nagar branch alone. The settlements, which were entered into with 5 regard to the Harbour Branch

and the other branches are all produced in the typed set of papers filed by the respondents. The first is dated December 25, 1988, in which one of

the terms is that two clerks/shroffs would attend to 10 the duties/functions of the ATM and would be eligible, but the prescribed allowance is as

admissible to tellers of the bank. This relates to the ATM installed at Harbour branch. On April 7, 1989 there was another settlement in which 15

the bank decided to install machines at Royapettah, Pursawakkam, Mylapore and Industrial Finance Branch and terms of two of the settlements

indicate that the parties had agreed with the norms in vogue or the ATM at 20 Harbour branch would govern the ATMs to be installed in the other

four branches. On January 22, 1990 there was yet another settlement in which the terms ignoring the Anna Nagar Branch were agreed upon. It is

seen from this that since there were practical difficulties in installation of ATM at Industrial Finance Branch, which was referred to in the second

settlement of above, it was agreed to be installed at Anna Nagar branch.

2. The next settlement is dated January 19, 1990, in which the term relating to payment of special allowance shows that the parties had agreed that

special allowance would be paid to all the clerical members who are working in cash department and that wherever clerical staff members are

drawing special allowance on permanent basis, they would be continued to be paid special allowance on permanent basis as long as they work in

the same branch and ceased to draw the allowance when they are leaving the branch. The other vacancies would be assigned on a turn basis. The

settlement, dated December 21, 1992, which has a specific relation to the T.Nagar branch, viz., Clauses (6), (7) and (8) are extracted below:

(6) On account of the networking of ATMs of our bank by linking it to the computer at CO/CPD, the duties/functions of the clerical staff posted

to attend the ATM work stand modified as follows : the two clerical staff drawing teller allowance on permanent basis would continue to draw the

same and perform the duties as agreed to in the earlier settlement. The operations of the ALPM attached to ATM will be assigned exclusively to

staff members on turn basis for three months among the staff members who are not in receipt of any special allowance as admissible to ALPM

operators.

(7) It is now agreed to that ATM proposed for Pursawakkam branch and AHD proposed for Mylapore branch will now be installed at T. Nagar.

(8) All other terms and conditions stipulated and agreed to in the earlier settlements, dated December 28, 1988, April 7, 1989 and January 22, 1990 remain unaltered.

3. The correspondence between the parties have been enclosed in the typed set of papers and one alone out of such letters is relevant and this is

addressed by the T.Nagar branch to the Assistant General Manager, Indian Bank Regional Office. The following extract is relevant:

As a result the following discrepancies have been observed in the earlier system:

(1) Cash receipt seat was not rotated once in three months and was done once in six months.

(2) Two ATM seats were given allowance on a permanent basis even though the ATM was introduced only in 1993.

(3) Tellers were not paid cash as per the procedure as they were paid terminal allowance only.

4. Further down, the branch had re-worked the office order and sought the approval for continuance of permanent allowance seats as before.

Thereafter the respondents sought to withdraw the special allowance and therefore industrial dispute was raised. The conciliation proceedings

failed and immediately W.P. No. 14333 of 1998 was filed for a mandamus not to withdraw the special allowance given to the two clerical staff

mentioned in the writ petition. The Government declined to refer the dispute and therefore WP.No. 14757 of 1999 was filed.

5. Learned counsel for the petitioner would submit that when the other four branches had been given the special allowance on a permanent basis

and when the settlement entered into with reference to T. Nagar branch would indicate that the norms governing ATMs in four other branches

would apply to T. Nagar branch also, there is no reason to discriminate the seniority staff in T. Nagar branch alone. He would submit that the

discrimination was only because the two staff mentioned in the writ petition belonged to the minority union.

6. Learned counsel for the petitioner also submitted that the Government ought to have ordered reference and should not have embarked on a

decision on merits and in this regard he relied on a decision in Sharad Kumar Vs. Govt. of NCT of Delhi and Others, and W.P. Nos. 7000 and

7001 of 1999. He further submitted that if the Court was so inclined to direct the Government to refer the dispute for adjudication and for this

purpose, the reliance was also placed in Tamil Nadu Atomic Power Employees Union Vs. Nuclear Power Corporation and Another, where F.M.

IBRAHIM KALIFULLA, J., has said that when a dispute of this nature is raised when system was prevailing for more than thirty years it sought to

be upset and (sic) no change can be brought into force unless the dispute is resolved one way or the other. In that case also, the Government had

declined to refer and the learned Judge had directed a time-bound adjudication.

7. Learned counsel for the respondents would submit that there was no illegality in the Government refusing to refer the dispute when apparently on

a reading of the settlement it was clear that there was no dispute. He would also submit that the first respondent-Union W.P.No. 14333 of 1998

was nothing but abuse of process of law and the employee had derived the protection of stay though on the failure of conciliation the Government

had declined to refer the dispute. Learned counsel for the respondents would further submit that the word ""two clerical staff drawing teller

allowance and continue to draw the same"" would itself show that they can be referred to ATMs which were in existence and not ATMs which

were to be installed and since this was not a matter which required any evidence or any decision on merits, the Government had rightly decided

that there was no industrial dispute to be adjudicated upon.

8. The order declining the reference reads ""the action of the management is in compliance with the guidelines/instructions of Government of India

and terms of the settlement, dated January 19, 1991. The union has failed to prove that the management has violated any of the relevant provisions

of the settlement.

9. Ex facie a reading of the order would show that the Government had exercised a quasi-judicial power since it was not satisfied with the manner

in which the petitioner had sought to ""prove that the settlement had been violated"". For that petitioner to prove the same necessarily evidence

would have to be adduced oral or documentary. It is difficult to accept the submission of the learned counsel for the petitioner that though the Government had used the word ""prove"" what actually is meant that even on a plain reading of the settlements, it was apparent that two staff of the T.Nagar branch were not entitled to that norms ignoring the other branches. In fact the impugned order in W.P. No. 14757 of 1999 does not even refer to the settlement, dated December 21, 1992, which would allegedly show that the settlement would not apply to T. Nagar Branch. In these circumstances I am following the guidelines laid down by the Supreme Court in Sharad Kumar (supra) in which the Supreme Court had referred to various earlier decisions. It was held that the State Government has a limited jurisdiction to examine the patent frivolous nature of demand but normally the rule would be to leave the Tribunal to decide the question of adjudication of demands. In that case, the Supreme Court has referred to the decision of the Rajasthan High Court where it was observed that the said question involves determination of facts and such a determination can only be made on the basis of evidence. In this case the question whether the reference to the person drawing the teller allowance in Clause (6) would apply only to ATMs that had been installed before the settlement and what would be the effect of the letter, dated November 8, 1996, which would show that at least from 1996 the petitioner had been given allowance on a permanent basis are matters to be decided by adducing evidence. It is a matter that the Tribunal alone is competent to decide. The Government erred in concluding that the petitioner had not proved violation of the provisions of the settlement. The petitioner had in fact no opportunity to prove his case.

10. As regards the question whether the writ petition in W.P. No. 14333 of 1998 was an abuse of process of law in view of the above finding that the Government ought not to have declined reference, I do not feel that the petitioner had secured an unfair advantage. Had the Government ordered reference as it ought to have done the matter might have been adjudicated by now. Admittedly, any adjudication will only affect one person. Out of three persons working within the zone one had left the branch, the other had obtained VRS and the decision would affect only one senior staff, who is mentioned in WP.No. 14333 of 1998.

11. In these circumstances, no orders are necessary in W.P.No. 14333 of 1998 and it is closed. W.P. No. 14757 of 1999 is allowed. The

Government is directed to refer dispute within four weeks from the date of receipt of a copy of this order and the dispute shall be adjudicated

within six months thereafter. No Costs.

12. The status of that one person namely, Sumathi Santhanam, who continues in T. Nagar branch shall, not be disturbed until the dispute is adjudicated.