

(1961) 03 MAD CK 0047
In the Madras High Court

Indian Bank Ltd.		APPELLANT
	Vs	
Industrial Tribunal and Others		RESPONDENT

Date of Decision : 06-03-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 17A

Citation : (1961) 1 LLJ 604

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

Ramakrishnan, J.—This is a petition under Article 226 of the Constitution praying for the issue of a writ of prohibition or any other appropriate writ against the respondent 1. The circumstances which gave rise to the petition are the following.

2. The petitioner is the Indian Bank, Ltd., Madras. The respondent 1 is the Industrial Tribunal, Madras. The respondent 2 is the president, Indian Bank Employees' Union, and the respondent 3 is the secretary-general, Federation of the Indian Bank Employees' Union. By an order of the Government of India, dated 18 February 1960, u/s 10 of the Industrial Disputes Act, a dispute was referred to the respondent 1-tribunal for adjudication. The matter in dispute was the "quantum of bonus payable to the workmen of the petitioner-bank for the year 1957." Subsequently, the Government of India constituted a national tribunal, and on 22 September 1960 referred to it, for adjudication the following:

Bonus--Principles and conditions under which payable, qualification for eligibility and method of computation after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by banks.

The details of the reference as given above are found in Schedule II of the Government of India's notification, dated 22 September 1960. In Schedule I, is given a list of banking companies between whom and their workmen, the dispute

specified in Schedule II, existed or was apprehended at the time notification was issued. Schedule I gives the names of 73 banks, and the petitioner, the Indian Bank, is item 32 in it. When the matter came up before the Industrial Tribunal, Madras (Sri K. Ramaswami Gounder), a preliminary objection was raised by the petitioner herein, viz., the management of the Indian Bank, that the tribunal had no jurisdiction to proceed with the adjudication, and that the reference for adjudication to the tribunal, should be deemed to have been quashed by reason of Clause (6) of Section 10 of the Industrial Disputes Act. This preliminary objection was considered at length by the tribunal, and by an order passed on 22 December 1960, the tribunal overruled the preliminary objection, and directed farther enquiry to proceed on the reference for adjudication. Aggrieved against the above order, the petitioner has filed the present petition applying for the issue of a writ to the industrial tribunal for "prohibiting the respondent 1 from proceeding with the enquiry and to pass such further or other order or orders as might be deemed fit."

3. Section 10, Clause (6) of the Industrial Disputes Act on which the petitioner relied, for his relief runs:

Where any reference has been made under Sub-section (1A) to a national tribunal, then, notwithstanding anything contained In this Act, no labour court or tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the national tribunal, and accordingly,

(a) If the matter under adjudication before the national tribunal is pending in a proceeding before a labour court or the tribunal, the proceeding before the labour court or the tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the national tribunal;

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the national tribunal to any labour court or tribunal for adjudication during the pendency of the proceedings in relation to such matter before the national tribunal.

The petitioner, contended that the matter referred to the national tribunal by the Central Government, was without any doubt whatsoever, a fundamental and integral part of the reference pending before the respondent 1, and that there could be no decision on payment of bonus without first settling or determining the principles or formula regarding the payment of bonus in banks. This point has been conceded by the industrial tribunal in its order above mentioned. Therefore, what the respondent 1 was called upon to decide would encroach on what the national tribunal was required to decide. The tribunal was clearly in error in claiming jurisdiction to proceed with the enquiry, when necessarily and unavoidably it has to decide the same question which is pending as a question common to all banks, on a nationwide level, before the national tribunal. Section 10(6) has been enacted just for the purpose of avoiding such conflicts. Strength

was sought to be obtained for this contention by referring to an earlier occasion when consequent on a particular decision of the respondent 1, arising in the course of the same proceedings, the tribunal held that it had a right to call upon the petitioner-bank to disclose information about its secret reserves. Aggrieved against that order, the management took up the matter in W.P. No. 362 of 1960. This came up before Ramachandra Ayyar, J., who allowed the petition and quashed the direction of the tribunal, making the observation:

“before there could be an order for inspection it had first to be ascertained whether the Full Bench formula would apply to the case of the banking company, and if the formula is held not applicable to it, whether (in) working any formula evolved for it, it would be necessary to know the amount set apart or provision made (for secret reserves).”

It was pointed out that this observation of the learned Judge, would show the importance of laying down general principles for the calculation of bonus, as a pre-requisite to the adjudication under reference before the respondent 1, and that these selfsame general principles were also now before the national tribunal for adjudication.

4. The above contentions, which are extracted from the affidavit filed in support of the petition, were strenuously contested in the counter-affidavit filed on behalf of the respondents 2 and 3, who represent the workers of the bank. They first of all explained the background against which the Central Government made the reference to the respondent 1-tribunal on 18 February 1960. The question of bonus in the case of banks as a general question, was referred in 1949, to the “Sen tribunal,” the matter referred to being “Bonus including the qualifications for eligibility and method of payment.” The Sen tribunal in its award held that the reference comprised disputes of a general nature regarding bonus, and did not cover disputes relating to the quantum of bonus for particular years in respect of particular banks. The Sen award was rendered invalid by a decision of the Supreme Court, and thereafter the same point came for decision before the “Sastri tribunal.” The Sastri tribunal came to the same conclusion, viz, that the reference did not include the determination of the quantum of bonus payable for the previous years by any of the banks. This view was confirmed by the Supreme Court in *State Bank of India and Ors. v. their workmen* 1959 II L.L.J. 205. It is against the background of the above proceedings, and also in the face of a strike, that the present reference, dated 18 February 1960, relating to the quantum of bonus payable to the workmen of the petitioner-bank for the year 1957, was made to the respondent 1. The strike was called off as a result of an agreement to have the dispute settled by adjudication by the tribunal. Even before the present reference, the workmen union had applied to the Government of India for referring the question to a national tribunal, on the ground that it involved a question of national Importance but the Government of India in its reply, dated 11 October 1958, stated that the issue concerned only a particular bank, and that it was inappropriate to refer it to national tribunal. In the light of

the above considerations, it should be held that the reference to the national tribunal related to a dispute of a general nature which did not include demands in respect of particular years by workmen of particular banks. For dealing with such a dispute adequate principles had been laid down by the Supreme Court in its decisions, including what is called the "Labour Appellate Tribunal's formula" approved by the Supreme Court in *Bombay Millowners' Association v. Rashtriya Mill Mazdoor Sabha* 1950 L.L.J. 1247. The workmen demanded bonus for this particular year only in accordance with the well-established principles mentioned above, and they never raised a dispute regarding the general principles relating to fixation of bonus. It was also pointed out that the Supreme Court had made it clear, that it had left open the question whether the Full Bench formula would apply to banks, and that it was open to the parties to canvass for or against the Full Bench formula when a dispute arose. It was further pointed out that the decision of the national tribunal on the reference made to it would only have prospective effect and would therefore not cover the present reference. It was finally urged that the reference to the respondent 1 could not lapse without any relief being granted and the respondent 1 had a statutory duty to make an award on the pending reference relating to the bonus for 1957.

5. Learned Counsel Sri Seshadri, appearing for the petitioner, argued that the respondent 1 in its order has recognized in Para. 3 that the principal qualifications for eligibility and method of computation of bonus, etc., specifically referred to the national tribunal for adjudication would have to be decided both by the national tribunal as well as by the respondent 1. Sri Seshadri pointed out that having conceded this identity, it was wrong on the part of the respondent 1, to hold as it did in the subsequent paragraphs of its order, that the two matters were clearly different, that the matter under adjudication before the respondent 1 was not a matter for adjudication before the national tribunal and that the national tribunal would have no jurisdiction to pass an award in regard to the claim for bonus for 1957.

6. In dealing with this particular problem, I will consider in the first place, the scope of Section 10(6) of the Industrial Disputes Act, on which the petitioner relies for the relief sought. The first part of Section 10(6) states that on a reference being made to a national tribunal, no labour court or tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the national tribunal. The second part of Section 10(6) contained in Section 10(6)(a) states that if the matter under adjudication before the national tribunal is pending in a proceeding before the labour court or another tribunal, the proceeding before the latter, in so far as it relates to such matter, shall be deemed to have been quashed. These two parts are not independent, but are linked together by the use of the word "accordingly." The effect of these two provisions is not merely to impose a prohibition against proceeding with the enquiry before the tribunal but there is also an obligation cast on the tribunal to treat the proceedings, which would include the reference itself, as void and quash them accordingly. A special provision which contains drastic directions of the

above kind, has to be construed strictly. In other words, it should be applied only if the tribunal is satisfied that the subject-matter of the specific reference in regard to which the provision is invoked, is comprised in the subject-matter of the general reference to the national tribunal. Again we can have a situation where a number of items are comprised in the subject-matter referred to adjudication to the labour court or tribunal, and identity has been established only between one or more out of them, with the matter under reference to the national tribunal. In this case, the bar u/s 10(6) will apply only to those items and the reference only in so far as it applies to those items, will stand quashed but the rest of reference could be allowed to proceed. On a plain reading of the matter under reference described in the schedules to the two notifications of the Government of India, it can be stated that they are not identical, on a strict construction of the words used. It may be argued that while settling the bonus for 1957 certain general principles regarding the payment of bonus would arise for consideration as a pre-requisite; but this is a different thing from contending that these principles form the subject-matter of the reference to the respondent 1. It is permissible to examine how a similar question was dealt with, when it came up before the Sen tribunal and the Sastri tribunal. This point has been referred to by the respondents 2 and 3 in their counter-affidavit. The specific item referred to these tribunals for adjudication was "bonus, including qualification for eligibility and the method of payment." The wording there, is no doubt different from the wording in the reference to the national tribunal in the present instance. But it is permissible to hold that both the reference dealt with the general principles for the grant of bonus to workmen in banks. In Para. 234 of their award, the Sen tribunal held that the above reference related to disputes of a general nature as contradistinct from dispute relating to the quantum of bonus for particular years in respect of particular banks. They pointed out that wherever a specific case was intended to be covered, the reference contained appropriate language. They declined to go into the demand made by several unions for bonus, with reference to past years in respect of particular banks. The question was again raised by the Sastri tribunal. The Sastri tribunal in Para. 345 of its award, agreed with the view of the Sen tribunal and observed:

We hesitate to hold that we are concerned with the question of quantum of benefits for particular banks and for particular years in the past in the light of profits of such banks during those periods. It may yet be open to the concerned parties, where there is a real grievance, to approach the Government to get a suitable reference for the future as well as for the account years 1949, 1950 and 1951.

Having made the above statement, the Sastri tribunal interpreting the general reference in Para. 346, stated:

The only question for consideration, therefore, is whether what may be called a bonus scheme for the future years can and should be devised and whether it should be made to apply retrospectively even to all banks and for all years.

Then the Sastri tribunal proceeded to lay down some principles for the award of bonus and commended their scheme for the earnest consideration of both the parties. The decision of the Sastri tribunal came before the Labour Appellate Tribunal. The Labour Appellate Tribunal was inclined to the view, in Para. 330 of their decision "the claims to bonus made for the relevant years have not yet been adjudicated upon and the terms of the reference have not been exhausted." In other words, the view of the Appellate Tribunal was that the scope of the general reference would include an adjudication for particular years and for particular banks. This finding came for decision before the Supreme Court of India In State Bank of India and Ors. v. their workmen 1959 II L.L. J. 205 and the finding given was:

It is clear that the Sen tribunal also understood the items as a reference of a dispute of a general nature which did not include demands for bonus for particular years in respect of particular banks (p. 210).

We are of the view that the Labour Appellate Tribunal was wrong in its conclusion that the reference has not been worked out and that individual claims for bonus in respect of particular banks must be determined by another tribunal on the basis of the reference made in 1052 (p. 213).

The above history of what transpired during the Sen and Sastri tribunals' adjudications is important not for the purpose of providing a specific authority to deal with this particular matter. It only illustrates how when a problem of a similar kind had been posed before similar tribunals in the past, they reached the conclusion that there could be a general reference and a particular reference in regard to bonus and that the general reference about the principles for the determination of bonus to banks in general should not be treated as including a particular reference about the bonus payable, In the case of a particular bank for a particular year. It appears to me that a similar view could be taken In regard to the subject-matter of the two references to adjudication in the present case also, and that it will be improper to resort to the remedy of quashing the reference to the respondent 1 u/s 10(6) of the Industrial Disputes Act.

7. Another objection strongly pressed before me by respondents 2 and 3 appears also to be significant. It was pointed out that the national tribunal might very well give decision applicable for future years because any retrospective application would have the effect of disturbing settlements already made and expose the managements to heavy liabilities and possibly a crop of strikes. It is also possible that the Government, may, acting under the powers given to them in Section 17A(1)(b) of the Industrial Disputes Act, declare that it will be Inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award of the national tribunal, and therefore make the operation of its decision prospective and not retrospective. All these contingencies have to be taken Into account before a decision could be given at this preliminary stage, that the matter referred to the respondent 1 for adjudication is identical in terms with the matter referred to the national tribunal,

so as to deprive the respondent 1 of its jurisdiction and have the proceedings quashed.

8. The learned Counsel Sri Seshadri next urged that what he sought for in the present application was not a direction for quashing the reference in its entirety, or even a part of it, but his request was that a direction on the nature of a writ of prohibition might issue to the respondent 1 restraining it from deciding the general principles for grant of bonus, and leave it open to the respondent 1 to deal with the reference only In regard to the rest of the subject matter of the reference.

9. This may appear at first sight to be an attractive and plausible line of argument. But it involves two assumptions. One is that the subject-matter of the reference to the respondent 1 is clearly divisible into two parts, one relating to general principles applicable to all the banks, and the other relating to their application to the petitioner-bank for a particular year. The second assumption is that it can be predicated now itself that the decision of the national tribunal on the general principles will be applicable retrospectively. I am not satisfied for the reason discussed on the foregoing paragraphs that these assumptions are correct. There is also this point to be considered. "Where proceedings are pending before an inferior court, part of which is within, and part is outside, the jurisdiction of such court, no prohibition lies until such court has actually gone beyond its competency and jurisdiction." vide Halsbury's Laws of England, Hailsham Edn., Vol. IX, p. 825.

10. In view of the above, I am of the opinion that adequate grounds have not been made out to grant the prayer in this petition. The rule nisi is discharged and the petition is dismissed with costs. Advocate's fee Rs. 100.