

(1961) 02 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 218 of 1959

Iyyappan Mills Ltd.

APPELLANT

Vs

Iyyappan Mills Workers Union and Others

RESPONDENT

Date of Decision : 07-02-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : AIR 1962 Ker 11 : (1962) 2 LLJ 84

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : P.K. Subramonia Iyer, P.V. Krishna Iyer and C.S. Ananthakrishna Iyer, for the Appellant; V. Viswanatha Menon and V.N. Gopalakrishnan Nair for Ist Respondent, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Haghavan, J.—The Management of the I. I. Iyyappan Mills (Private) Ltd., has filed this Writ Petition for the issue of an appropriate writ in the nature of certiorari to quash the findings and the directions given by the Industrial Tribunal, Kozhikode, the 2nd respondent before us, on the ground that such findings and directions are ultra vires the powers of the Tribunal and since they constitute errors apparent on the face of the record. The 1st respondent is the Union of the Workers of the Iyyappan Mills and the 3rd respondent is the Chief Secretary to the Government of Kerala.

2 We would narrate the relevant facts necessary for the appreciation of the questions raised in this writ petition. The petitioner-Mills were started in 1954 with three separate industries or at least with three separate sections; the three sections being the Oil Mills, the Foundry and Engineering Works and lastly the Soap Works. Later on the Management resolved, for industrial and trade reasons, to close down the Oil Mills and the Foundry and Engineering Works and to retain only the Soap Works. Accordingly the Management issued notice to the workers

and also to the Government of its intention to close the two sections from 1st July, 1955. The Management also made an offer to pay retrenchment compensation to the 51 workers on a basis according to law. Sixteen out of the total number of 51 workers received the amounts of compensation, but the remaining 35 repudiated the offer by their notice dated 5th July, 1955, The Management published its offer to pay compensation both On the notice board of the Mills as well as in a local daily.

Thereafter, since the 35 workers repudiated the offer of the Management, the Government of Travancore-Cochin referred certain issues to the Industrial Tribunal, Trivandrum, for adjudication u/s 10(1)(c) of the Industrial Disputes Act. Later on there was a farther reference of three-more issues by the same Government to the same Tribunal. The petitioner-Mills challenged the legality of the aforesaid references by two writ petitions, Nos. 356 and 167 of 1955, before the Travancore-Co chin High Court mainly on the ground of want of jurisdiction, as in the second re-larence the closure of the Industries was admitted. At the time of hearing of these writ petitions it was agreed before the High Court of Travancore-Cochin that some of the questions referred did not arise and could not be referred for adjudication.

Therefore the High Court directed the Tribunal to drop one of the issues out of consideration, to deal with two other issues in so far as they related to the workmen of the Mills who were in employment on the date of the reference and also directed the Tribunal to consider, in dealing with the remaining issue, all the contentions of the parties including the contention of the Mills that the workmen of the closed sections Were not entitled to any award of bonus on the ground that those sections were closed prior to the date of reference. This was the first stage in the dispute.

3. The Government thereafter withdrew the aforesaid reference from the Industrial Tribunal, Trivandrum, and made them over to the Industrial Tribunal, Ernakulam, in April, 1956 in the same terms. Consequently the petitioner-Mills filed two other writ petitions Nos. 111 and 112 of 1956, before this Court. When these writ petitions came up for hearing in October 1957, this Court reiterated and re-recorded the agreed order passed in the two previous writ petitions. The contention of the petitioner Mills regarding the ultra vires nature of the references was rejected and the scope of the references and the jurisdiction of the Tribunal were delimited and defined by the order of the High Court.

The High Court indicated in the order that relief to workmen could arise only on a finding that the closure was not real and bona fide and therefore not justifiable and could arise only if the closure spelt in the realm of victimisation. The High Court also made it clear that if the closure was real and bona fide it would be a justifiable closure and if the closure were not so justifiable, the workers would be entitled to claim appropriate relief. Thereafter the references were-taken up by the Tribunal, the head-quarters of which were transferred by this time, from Eninkulam to Kozhikode. On 31st December, 1958 an award was passed in the

references and the present writ petition is to quash some of the findings and directions in the said award.

4 The Tribunal, after an elaborate consideration of the evidence before it, recorded the finding that the I. I Iyyappan Mills Ltd., constituted only one industry with three different sections, namely, the Oil Mills, the Foundry and Engineering Works and the Soap Wotks. The Tribunal also found that there were no grounds to infer that the two sections in the Mills, viz, the Oil Mills and the Foundry and Engineering Works, were stopped to victimise labour. According to the Tribunal the closure was effected for bona fide trade reasons.

But the Tribunal, notwithstanding the aforesaid findings, proceeded further and reached the conclusion that the non-employment of the workers in the two sections referred to above, which were closed, was retrenchment within the meaning of the Industrial Disputes Act and therefore all the workers in those two sections were entitled to retrenchment compensation as provided in Section 25F. Proceeding still further the Tribunal fixed the amounts of compensation at the figures offered by the Management in its notice already referred to which was issued at the time of the proposal to close down the said two sections. It is this portion of the award that is now challenged before us in this Writ Petition,

5 The argument of the learned advocate of the petitioner, in short, is this; Once the Tribunal found that the closure of the two sections was for bona fide trade reasons and thus justifiable, the Tribunal had no jurisdiction to go further and decide that the non-employment of the workers involved in the closure was retrenchment and consequently the workers were entitled to retrenchment compensation. According to the learned advocate that portion of the finding of the Tribunal deciding that the closure was only retrenchment and hence the workers were entitled to retrenchment compensation was without and beyond its jurisdiction and therefore is liable to be quashed by this Court under Article 226 of the Constitution. This, in short, is the contention ably and seriously pressed before us,

6 The learned advocate seeks to make a distinction between cases of complete lack of jurisdiction on the one hand, and cases of irregular, wrong or illegal exercise of jurisdiction vested in the Tribunal on the other. In the former case, he argues, the Court shall issue a writ even if there is no substantial injustice done or miscarriage of justice caused by the order. His contention is that in such a case where the Tribunal acts without jurisdiction, the act in itself is substantial injustice or miscarriage of justice. In the latter case, namely, where the act complained of is an illegal, improper or wrong exercise of jurisdiction, in such a case this Court need exercise its powers under Article 226 only in its discretion and if substantial injustice or miscarriage of justice also is not proved, this Court need not issue a writ to quash the order.

The learned counsel further argues that the closure of one section of an industry is in effect the same as the closure of the whole industry and therefore if such a

closure of one section is for bona fide trade reasons and justifiable, it does not stand on a different footing from a closure of the entire industry. Though authorities have been cited on this last point also, we are not deciding this question in the present case; for, in the view we are taking on the first question, a decision on the second point becomes unnecessary.

7 Considerable arguments have been adduced before us on the first question. In support of this contention our attention has been drawn to a passage in Halsbury's Laws of England, 3rd Edition, Vol. 11, at page 140, which reads:

"Although the order is not of course it will though discretionary nevertheless be granted *ex debito justitiae* to quash proceedings which the Court has power to quash, where it is shown that the court below has acted without jurisdiction or in excess of jurisdiction."

Basing on this passage the learned advocate argues that in cases of complete lack of jurisdiction or excess of jurisdiction the order is liable to be quashed *ex debito justitiae*, even though the writ is "not of course". We do not propose to investigate further into the matter regarding the position in England; for, whatever might be the position under the English law, the position in India under Article 226 of the Constitution is clear. Article 226 does not make any distinction between writs of course and writs of right on the one hand and discretionary writs on the other. The powers of the High Court under Article 226 of the Constitution appear to be quite wide and the said powers confer on it an extensive discretion, with the possible limitation that the discretion has to be exercised in accordance with well-established judicial principles and only on judicial considerations and not arbitrarily. There are observations of the Supreme Court in several judgments which throw considerable light on this question, In *G. Veerappa Pillai v. Raman and Hainan Ltd.* AIR 1952 SC 392, Chandrasckhara Aiyar J. observes at page 195.

"Such writs as are referred to in Article 220 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it, or in violation of the principles of natural justice or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, Omission, error, or excess has resulted in manifest injustice."

In *T.C. Basappa Vs. T. Nagappa and Another*, , B. K. Mukherjea J. quotes the above observation of Chandrasekhara Aiyar J. with approval and follows it. We would also quote another observation of Chandrasckhara Aiyar J. in *D.N. Banerji Vs. P.R. Mukherjee and Others*, at p. 59:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere."

Yet in another decision, namely *Sangram Singh Vs. Election Tribunal, Kotah*,

Bhurey Lal Baya, the Supreme Court observes at p. 429.

"The High Courts do not and should not, act as Courts of appeal under Article 226, Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue.

In another case *A.M. Allison v. B. L. Sen* (S) *A.M. Allison Vs. B.L. Sen*, , Bhagawati J. observes as follows at p. 231:

"Proceedings by way of certiorari are "not of course". (Vide Halsbury's Laws of England Hail-sham Edition, Vol. IX, paras 1480 and 1481 PP-877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice and in these appeals which are directed against the orders of the High Court in application under Article 226, we would refuse to interfere unless we are satisfied that the justice of the case requires it,"

We would refer to two more recent cases, the second being one reviewing the judgment in the first. The first is *Balwantrao Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., Ahmedabad Vs. M.N. Nagrashna and Others*, . In that case Wanchoo J. observes at page 409 ;

"The question then arises whether we should interfere in our jurisdiction under Article 136 of the Constitution, when we are satisfied that there was no failure of justice. In similar circumstances this Court refused to interfere and did not go into the questions of jurisdiction on the ground that this Court could refuse interference unless it was satisfied that the justice of the case required it: see *A.M. Allison Vs. B.L. Sen*, . On a parity of reasoning We are of opinion that as we are not satisfied that the justice of the case requires interference in the circumstances, we should refuse to interfere with the order of the High Court dismissing the writ petition of the appellant."

The same matter came up in review before the Supreme Court in the second case, *Balwantrao Chimanlal Trivedi Vs. M.N. Nagrashna and Others*, and Wanchoo J. observes again at page 1293 and 1294:

"Besides it is not unknown to law that decisions of original Courts and tribunals may be allowed to stand even though there may be some doubt as to the jurisdiction of such courts or tribunals. There are provisions in the revenue laws where in case of doubt whether the civil or the revenue court has jurisdiction the decision of the original court is allowed to stand in certain circumstances if there has been no failure of justice:

Therefore when the judgment under review left the question of jurisdiction open on the ground that there was no failure of justice and in consequence this Court refused to exercise its jurisdiction under Article 136 it cannot be said that something was done which was unknown to law. It is necessary to remember

that wide as are our powers under Article 136, their exercise is discretionary; and if it is conceded, as it was in the course of the arguments, that this Court could have dismissed the appellant's application for special leave summarily on the ground that the order under appeal had done substantial justice, it is difficult to appreciate the argument that because leave has been granted this Court must always and in every case deal with the merits even though it is satisfied that ends of justice do not justify its interference in a given case."

8. The foregoing extracts from several judgments of the Supreme Court leave no room to doubt that the powers of the High Court under Article 226 of the Constitution are very wide and discretionary and the High Court may not exercise them unless there is substantial injustice or substantial miscarriage or failure of justice. The mere absence of jurisdiction of a subordinate court or tribunal or the mere presence of errors apparent On the face of the record without any resultant manifest injustice is not sufficient to call for the exercise of the discretionary powers, of the High Court under Article 226 of the Constitution. The lack of jurisdiction of the subordinate tribunal, by itself, is not substantial or manifest injustice.

In the case before us the Tribunal acted in excess of jurisdiction in recording a finding that the closure, though bona fide and justifiable, amounted, to retrenchment and therefore the workers were entitled to retrenchment compensation. Strictly speaking, that portion of the finding of the Tribunal in the award is beyond or without jurisdiction. Even so, what the Tribunal has granted as retrenchment compensation are only the amounts offered by the management in its notice at the time of the closure. It may also be noted that 16 out of 51 workers have already been paid compensation at this rate. Therefore, in our opinion no manifest injustice or substantial miscarriage or failure of justice has resulted by the said finding or direction of the Tribunal, though the order is in excess of jurisdiction. In such circumstances we do not consider that this is a fit case where we should exercise our discretionary powers under Article 228 of the Constitution. The result is the writ petition fails and is accordingly dismissed. In the circumstances, we order no costs.