
(1958) 11 KL CK 0011
In the High Court Of Kerala

Jai Hind Motor Service

APPELLANT

Vs

Venkitaswami and Others

RESPONDENT

Date of Decision : 26-11-1958

Acts Referred:

Constitution of India, 1950 — Article 136, 223, 226
Industrial Disputes Act, 1947 — Section 10, 33, 33A

Citation : (1959) 1 LLJ 504

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—This is an application under Article 226 of the Constitution by the proprietor, Jai Hind Motor Service, Ernakulam, to call for the records and to quash the award of the Industrial Tribunal, Trivandrum, dated 25 May 1958 and passed in I.D. No. 3 of 1967.

2. An industrial dispute numbered as I.D. No. 67 of 1955 was pending before the industrial tribunal. Respondents 1 to 14 to this application, are workmen of the Jai Hind Motor Service employed in various categories. During the pendency of I.D. No. 67 of 1955, the management, alleging certain misconduct against the respondents 1 to 14, suspended them from service in October 1956. On 5 November 1956, the management filed two petitions before the tribunal u/s 33 of the Industrial Disputes Act, asking for permission to dismiss all the fourteen workmen for their alleged misconduct. On 12 January 1957, the industrial tribunal declined to give the permission asked for on the ground that the decision of the management to dismiss the fourteen workers was unjustified. As the workmen were not taken back and allowed to resume their employment, the respondents 1 to 14 filed a complaint u/s 33A of the Industrial Disputes Act, 1947, before the tribunal on 15 February 1957. This complaint was taken on file by the tribunal and numbered as I.D. No. 3 of 1957.

3. On 21 March 1957, the management filed the petitions in the Kerala High Court under Article 226, namely, O.Ps. Nos. 120 and 121 of 1957, to quash the

order dated 5 November 1956 of the industrial tribunal refusing to lift the ban u/s 33 of the Act. On 3 January 1958, the High Court (Sankaran and Kumara Pillai, JJ.) dismissed O.Ps. Nos. 120 and 121 of 1957. After the dismissal of the original petitions by the High Court, I.D. No. 3 of 1957 was taken up by the tribunal and finally disposed of on 22 May 1958. The tribunal has directed the reinstatement of respondents 1 to 14 with half of their wages being paid from the date of the suspension till the date of their reinstatement. It is this award that is being sought to be challenged in these writ proceedings.

4. Two counter-affidavits have been filed on behalf of the respondents 1 to 14, one by the respondent 3 and another by respondent 4. It is stated in the counter-affidavits that the award in I.D. No. 3 of 1957 has been passed in accordance with law and it is not liable to be quashed on any ground. The prior proceedings u/s 33 and the judgment of the High Court confirming the order of the tribunal have all been mentioned in great detail. It is alleged that the act of the management is purely vindictive and this original petition has been filed merely to protract and delay the proceedings which have ended in favour of the workmen. It is also stated in the counter-affidavits that the petitioner applied for special leave to appeal to the Supreme Court under Article 136 of the Constitution challenging the decision of the High Court in the two original petitions and it has also been dismissed. The petitioner also challenged the present award in I.D. No. 3 of 1957 by independently filing an application to the Supreme Court on 25 June 1958 by applying for special leave under Article 136. But the Supreme Court by its order dated 15 July 1958 declined to grant special leave. The order of the Supreme Court refusing to grant special leave concludes the rights of the parties and it is not open to the petitioner to again challenge the very same proceedings independently under Article 226.

5. It is further stated that after the dismissal by the High Court on 3 January 1958 of O.Ps. Nos. 120 and 121 of 1957, the applicant himself moved the tribunal on 4 January 1958 to take up I.D. No. 3 of 1957 and dispose it of early and therefore it is not open to him to challenge the jurisdiction of the tribunal to dispose of I.D. No. 3 of 1957. Finally, it is stated that the respondents 1 to 14 have been kept out of employment for over 22 months and they are put to a great deal of hardship by the conduct of the petitioner,

6. Mr. T. S. Krishnamurthi Ayyar, learned Counsel for the petitioner, raises two contentions before me and they are:

(1) the application u/s 33A was not maintainable because the order of the tribunal dated 5 November 1956 refusing permission u/s 33, was pending final adjudication by the High Court in O.Ps. Nos. 120 and 121 of 1957; and

(2) in any event, the tribunal has not dispassionately considered the application u/s 33A and recorded findings independently of what has happened in the proceedings u/s 33 of the Act.

7. On the other hand, the learned Counsel appearing for the workers supported

by the learned Government Pleader, have contended that the application u/s 33A filed by the workers, was perfectly justified and was maintainable. As soon as the order was passed on 5 November 1956 by the tribunal refusing to lift the ban in favour of the employer, the management had no right to continue to keep the workers under suspension. The writ proceedings filed in the High Court cannot be considered in law, to be a continuation of proceedings u/s 33 of the Act. The continuance of the suspension after 5 November 1956 amounts to a contravention of the provisions of Section 33 and the tribunal was bound to adjudicate upon the complaint as if it were a dispute referred to it in accordance with the provisions of the Act. The management had no fresh evidence to offer before the tribunal and they themselves invited the tribunal to give a decision on the materials already filed in the proceedings u/s 33 of the Act. In spite of the fact that no fresh evidence was adduced, the tribunal has considered the matter in the light of the provisions of Section 33A and recorded findings against the petitioner which could not be challenged in proceedings under Article 226. Before I consider the contentions of Mr. T. S. Krishnamurthi Ayyar, I will dispose of a preliminary objection that has been raised as to the maintainability of the application on behalf of the respondents. The preliminary objection is based upon the fact that the petitioner filed an application, Ex. R. 3 in the Supreme Court under Article 136 of the Constitution for special leave to appeal against the award in I.D. No. 3 of 1957 dated 25 May 1958. The same grounds as are mentioned in this writ application were taken in the application filed for special leave. The application was filed on 25 June 1958 and it was rejected on 15 July 1958 by their lordships of the Supreme Court. As the Supreme Court has declined to entertain an appeal against the award, it must be deemed to have impliedly held that the award is valid in law.

8. On the other hand, Mr. Krishnamurthi Ayyar relied upon the decision of the Madras High Court in *Management of Western India Match Company, Ltd. Vs. Industrial Tribunal and Another*, in support of his contention that notwithstanding the rejection by the Supreme Court of the special leave application, the present application under Article 226 is maintainable. The learned Counsel for the union did not challenge the correctness of this decision. The learned Government Pleader did not no doubt concede that he is accepting the position laid down by the learned Judges of the Madras High Court. He only pointed out that the learned Judges in that case entertained an application under Article 226 on the ground of natural justice. He also submitted that it will be rather incongruous if the High Court is to interfere and take a different view when the Supreme Court has declined to grant special leave to appeal, under Article 226.

9. After hearing the learned Counsel on this point as at present advised, I am inclined to follow, with respect, the judgment of Rajagopalan and Ramachandra Ayyar, JJ. in the decision in *Management of Western India Match Company, Ltd. Vs. Industrial Tribunal and Another*, The learned Judges observe at p. 322 as follows:

The scope of the proceedings under Article 226 of the Constitution is very much more limited compared to what the Supreme Court could order in an appeal, one leave is granted under Article 136 of the Constitution and the appeal is admitted. The grant of leave under Article 136 of the Constitution is, however, essentially discretionary. So is the issue of a writ of certiorari under Article 226 of the Constitution. That discretion, however, has to be exercised on well-recognized lines.

Again the learned Judges observed at p. 322 as follows:

The right to apply for leave to the Supreme Court under Art. 136 of the Constitution, if it could be called a "right" at all, cannot be equated to a right to appeal. Obviously a High Court cannot refuse to entertain an application under Article 226 of the Constitution on the ground that the aggrieved party could move the Supreme Court under Article 136 of the Constitution. That the Supreme Court declined to exercise its discretion in favour of the petitioner by granting the leave asked for cannot, in our opinion, affect the jurisdiction vested in the High Court Article 226 of the Constitution.

Even had there been a right of appeal to any other forum whether it was availed of or not, the jurisdiction under Article 226 of the Constitution would be left untouched. It has been consistently held that the existence of an alternative remedy is no bar to the assumption of jurisdiction under Article 226 of the Constitution though it would be a very relevant factor in deciding whether the discretion to grant the relief would be exercised in a given case.

That was restated by the Supreme Court in *U.P. State v. Muhamad Nooh* AIR 1958 S. C. 86 at p. 93. As the learned Advocate-General however pointed out, Article 136 of the Constitution does not really provide a remedy as such as an alternative to what could be granted under Article 226 of the Constitution.

The learned Judges rejected the contention that a recourse to Article 136 would deprive a party to ask for relief under Article 226 in the following words:

We have no hesitation in rejecting the extreme contention of the learned Counsel for the respondents, that once the aggrieved party had had recourse to Article 136 of the Constitution though it failed, this Court would have no jurisdiction to grant a rule nisi under Article 226 of the Constitution. Whether in the exercise of its discretion the Court should discharge the rule issued in the present case, is however, a wholly different question.

The correct position in such cases, if I may say so with respect, has been indicated by the learned Judges at p. 323 as follows:

That the Supreme Court declined to exercise its discretion in favour of the petitioner appears to us to be a factor that ought to be taken into account and given due weight, when we are called upon to exercise our discretion in favour of interference with the award of the tribunal on some of the very grounds specified in the application for leave to appeal that failed

10. Following the decision of the Madras High Court, I hold that the petitioner is not precluded from filing this application under Article 226 of the Constitution. But whether he could be granted any relief is another aspect of the matter.

11. The first contention of Mr. Krishnamurthi Ayyar is that the application u/s 33A which has been numbered as I.D. No. 3 of 1957, is not maintainable because the order dated 5 November 1956 refusing permission u/s 33 was being challenged in the High Court in O. Ps. Nos. 120 and 121 of 1957. The original petitions must be considered to be a continuation of the proceedings u/s 33. The Supreme Court has laid down that suspension pending enquiry or suspension pending an application to lift the ban u/s 33 are legal and valid. If so in this case, the suspension which is continued and which is the subject of the fresh application u/s 33A, must be considered to be only suspension pending the final adjudication of the proceedings u/s 33. No doubt the tribunal has rejected on 5 November 1956 the application of the management filed u/s 33 to lift the ban and up to that date at least there can be no controversy that the order of suspension was valid. Though the complaints were filed on 15 February 1957 still the original petitions themselves were filed in the High Court on 21 May 1957. The filing of the original petitions has taken away the finality of the order dated 5 November 1956 of the industrial tribunal and therefore there is no scope for any application to be filed u/s 33A, So ran the argument of Mr. Krishnamurthi Ayyar.

12. I cannot accept this line of reasoning of Mr. Krishnamurthi Ayyar. It may be that the petitioner can invoke the jurisdiction of this Court under Article 226, But it has been held by the Supreme Court that the High Courts do not and should not act as Courts of appeal under Article 226. There is no right of appeal to the High Court provided in the Industrial Disputes Act itself. The proceedings initiated under Article 226, by filing O.Ps. Nos. 120 and 121, cannot, in my view, be considered to be a continuation of the proceedings u/s 33 of the Industrial Disputes Act so as to make the continuance of an order of suspension valid even after 5 November 1956, namely, the date of dismissal by the tribunal of the application of the management u/s 33. After the dismissal of the application on 5 November 1956, the complaint u/s 33A had been filed on 15 February 1957 and the tribunal had perfect jurisdiction to entertain the same. Because those proceedings were stayed by the High Court, they could not be immediately taken up for disposal. After the dismissal by the High Court on 3 January 1958 of the two original petitions the petitioner himself filed an application before the tribunal on 4 January 1958, Ex. B. 2, requesting the tribunal to take up I.D. No. 3 of 1957 for disposal as quickly as possible. The position of the parties on a refusal being given by the tribunal to lift the ban u/s 33, has been dealt with by the Supreme Court when dealing with the analogous provisions in the Industrial Disputes (Appellate Tribunal) Act, 1950, in the decision in Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, of the reports their lordships observed as follow:

If the permission is granted, the ban would be lifted and the employer would be at liberty if he so chooses thereafter, to deal out the punishment to the workmen.

On such action being taken by the employer the workmen would be entitled to raise an industrial dispute which would have to be referred to the appropriate tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate tribunal, the workmen would be entitled to have all the circumstances of the case scrutinized by the tribunal and would be entitled to get the appropriate relief at the hands of the tribunal. If, on the other hand, such permission is refused, the parties would be relegated to the status quo and the employer would not be able to deal out the punishment which he intends to do to the workmen.

Therefore, according to the principle laid down by the Supreme Court, inasmuch as permission has been refused by the tribunal on 5 November 1956, the parties are relegated to the status quo and the right of the management to continue the punishment stops. Therefore, the tribunal had jurisdiction to entertain the complaint filed u/s 33A by the respondents 1 to 14 on 15 February 1957 and it had also jurisdiction to adjudicate upon the complaint as if it were a dispute referred to it in accordance with the provisions of the Act.

13. The second attack made on the award is that the tribunal has merely incorporated its previous findings recorded in the application u/s 33 as also the findings of the High Court in O.Ps. Nos. 120 and 121 of 1957. No doubt, the legal position is clear that proceedings u/s 33A must be considered as a separate dispute on the materials placed before it. A reference to the award passed by the tribunal will clearly show that the criticism of Mr. Krishnamurthi Ayyar is not well founded.

14. It is seen that in this case the employer's objection to the complaint u/s 33A was substantially what was stated by him in his application u/s 33. The same reasons for taking action against the workmen and given in his previous application before the tribunal, were substantially taken by the management in these proceedings also. After charging the workmen with disobedience, etc., the management wound up by saying that chargesheets were given to the workmen and they were found guilty and after enquiry they have been placed under suspension. It is also seen from Para. 3 of the award that the management specifically prayed that the petitions presented by him on 5 November 1956 u/s 33 to dismiss the workmen be treated as part of the objections to the complaint and be gone into on merits. This shows that the management invited the tribunal to traverse the same ground over again. After setting out the various contentions and the proceedings connected with the application u/s 33, the tribunal has quite properly stated in Para. 7 of the award that the approach to be made to an application u/s 33 is different from that to be made under 8. 33A of the Act. It has also Stated in that paragraph as to how the two proceedings are different. Therefore, that clearly shows that the tribunal was fully aware of its duties and responsibilities when disposing of an application u/s 33A. It is made clear by its further observation, namely:-

But the jurisdiction of the tribunal when dealing u/s 33A is more comprehensive in that it has to go into the merits in more detail treating it as a regular dispute referred u/s 10 of the Act and grant appropriate relief. Hence the fact that this tribunal in the earlier proceedings refused to lift the ban on the materials placed before it then, could not deter it from entering into the merits afresh and arriving at proper conclusions on the basis of new materials, if any, placed before it in these proceedings.

Further, the tribunal observes in Para. 8 of the award as follow:

It may be noted that no new evidence either oral or documentary was produced at the trial of this dispute. On behalf of the management, the manager was examined. He does not swear to any new facts not covered by the prior proceedings. There was a prayer from the employer to incorporate all the records produced and marked in Section 33 proceedings in this dispute and that was allowed.

These statements in the award have not been controverted before me by Mr. Krishnamurthi Ayyar. It is also stated in the award that the learned Counsel appearing for the management, advanced more or less the same old arguments as were advanced by him in the earlier proceedings. In view of all these circumstances, the tribunal has been invited by the management itself to dispose of the application u/s 33A on the very materials already on record. It is in this context that the tribunal refers to its previous order and also to the order of the High Court. In the circumstances of this case, I cannot find anything wrong or illegal in that procedure. The petitioner had absolutely no new or additional material to be placed before the tribunal for any reconsideration. He relied on the old records and he advanced the same old arguments. Therefore, the tribunal was left with no other alternative but to refer to its previous findings especially when those findings have been confirmed by the High Court also.

15. It is also seen that the management pressed vehemently before the tribunal that the workmen have gone on an illegal strike and therefore the management was justified in dismissing them on this score. The tribunal in dealing with this contention has stated that this charge was being put forward for the first time and the workmen were not given any opportunity of meeting a case that they had indulged in any strike, much less illegal strike, and this finding is arrived at by the tribunal on going through the enquiry proceedings conducted by the management.

16. Finally, the tribunal comes to the conclusion that the workmen are not guilty of any misconduct and that the management was not justified in dismissing them on the charges levelled against them.

17. That the tribunal has considered the case independently and without in any way being influenced by its previous decision against the employer is also clear when it refused to accede to the request of the counsel for the workmen that respondents 1 to 14 must be reinstated in service with full back wages from the

date of suspension. The tribunal has taken the interest of the industry into account and held that an award with full wages at that distance of time as prayed for by the counsel for the workmen, will tend to paralyze the industry. Therefore, the tribunal directed the reinstatement of all the workmen by being paid only half of their wages from the date of suspension.

18. I do not see any error apparent on the face of the record to warrant Interference with the award under Article 223, The tribunal has considered the entire material placed before it and if the petitioner had no fresh material to offer, he cannot find fault with the tribunal for referring to its previous findings. In spite of that, the tribunal has kept in mind its duties u/s 33A and has done the best in the circumstances.

19. The application fails and is dismissed with costs of respondents 1 to 14 one set fixed at Rs. 150 and the costs of the Government Pleader appearing for the respondent 15 fixed at Rs. 100.