

(1959) 01 KL CK 0027
In the High Court Of Kerala

Kannan Devan Hills Produce Company Ltd. and Others

APPELLANT

Vs

Their Staff

RESPONDENT

Date of Decision : 09-01-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 133, 134, 30
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11

Citation : (1959) 1 LLJ 608

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Judgement

T.K. Joseph, J.—This is a petition under Article 226 of the Constitution and the prayer is to call for the records of Industrial Dispute No. 58 of 1956 on the file of the Industrial Tribunal, Ernakulam, for the purpose of quashing by a writ of certiorari or other appropriate writ, direction or order, two orders Exs. E and F passed by respondent 2, the industrial tribunal. The petitioners are the Kannan Devan Hills Produce Company, Ltd., Munnar, the Anglo-American Direct Tea Trading Company, Ltd., Munnar, and the Amalgamated Tea Estates Company, Ltd., Munnar. The staff of those companies represented by the regional secretary, Estate Staffs" Union of South India. High Range Branch, Munnar, is respondent 1.

2. The three companies which have jointly filed this petition are subsidiaries of James Finley and Company, Ltd., having their registered office in Glasgow. The managing agents of the companies in India are James Finley and Company, Ltd., Calcutta. The question referred to the tribunal for adjudication was that of bonus for the years 1951-52 and 1952-53. There were two prior agreements between the petitioners and respondent 1 made on 22 March 1951 and 29 December 1954 where-under the staff was entitled to annual bonus of 4 per cent of the profits. The disputes as to whether the computation of bonus for the years mentioned above was correct was referred by the State Government to the industrial tribunal. The issued referred for adjudication was,

whether the assessment of the 4 per cent of the profits of the South India Estates belonging to the K.D.H.P. Co., Ltd., the A.A.D.T.T. Co., Ltd., and the A.T.E. Co., Ltd., Munnar, for the years 1951-52 and 1952-53 as constituting" the bonus for the years 1951-52 and 1952-53 as mentioned in the conciliation agreement, dated the 22 March 1954 is correct. If not what should be the correct assessment and to what reliefs, if any, the staffs are entitled

During the pendency of the enquiry by the tribunal respondent 1 made a written submission Ex. B, dated 16 June 1956 to call upon the petitioners to produce their balance sheets, profit and loss accounts as well as details of salaries of the whole staff, managerial or subordinate, for the two years in question. The petitioners filed a counter, offering to produce certain of the documents called for but objecting to the production of the manufacturing and trading accounts. A further submission Ex. C was filed by respondent 1 on 21 July 1956 to which a counter, Ex. D, was filed by the management on 8 August 1956. Respondent 2 passed an order on 8 August 1956 that the question of production of documents would be considered "after the evidence of the union." Two witnesses were examined on behalf of respondent 1 and then the application for production of documents was taken up for consideration. After hearing both sides, respondent 2 passed an order Ex. E on 21 January 1957, directing the petitioners to produce all their account books from Glasgow at the cost of the union. Two further submissions were made by respondent 1 on 30 March 1957 and 12 April 1957 purporting to specify the books required. Pursuant to the order Ex. E, respondent 2 issued a notice Ex. P dated 4 May 1957 informing the petitioners that a sum of Rs. 1,320 had been deposited by respondent 1 towards cost of production of the documents called for. The petitioners contend before this Court that the order Ex. E and the notice Ex. F are liable to be quashed. The grounds relied on are that respondent 2 exceeded his jurisdiction in passing these orders, that established principles of law have been violated in directing production of these books, that respondent 2 failed to note that no grounds justifying the production of the documents or respondent 1's right to inspect the same had been made out and that the provisions of the CPC governing such matters were not followed by respondent 2. The respondents have not cared to file any counter to the original petition and at the time of hearing, respondent 2 alone was present.

3. The first point raised on behalf of the petitioners is that the provisions of the CPC were overlooked by respondent 2 in passing the order Ex. E. The powers of the industrial tribunal to order production of documents are contained in Clause 3 of Section 11 of the Industrial Disputes Act which reads as follows:-

Every board, court or tribunal shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (V of 1908) when trying a suit in respect of the following matters, namely:

- (a) enforcing the attendance of any person and examining him on oath ;
- (6) compelling the production of documents and material objects;

- (c) issuing commissions for the examination of witnesses ;
- (d) in respect of such other matters as may be prescribed.

The relevant provisions of the CPC are Section 30 and Rule 18 of Order XI which are extracted below:

Subject to such conditions and limitations as may be prescribed, the Court may, at anytime, either of its own motion or on the application of any party,

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
- (c) order any fact to be proved by affidavit.

Rule 18 (R.S.C. Order 31, Rule 18, Sections 133, 134):

(1) Where the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of the pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit, provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavits of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Under Rule 18 any application to inspect documents except those referred to in pleadings, etc., should be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect the same and that the documents are in the possession of the opposite party. Respondent 1 has not filed any affidavit in support of the application so that there is no foundation for the order. The powers of the industrial tribunal are not higher than those of the civil Court and in the absence of such an affidavit, the tribunal has no jurisdiction to pass an order for production or inspection of the documents called for. The powers of the industrial tribunal to order inspection of documents came up for consideration in *Burn and Co. Vs. Jitendra Nath Maitra and Others*, , wherein it was held:

Until an affidavit of documents has been filed, the Court would have no jurisdiction to order inspection. This is not a procedure which can be omitted. I am informed that the tribunals do not order the filing of an affidavit of documents before ordering inspection. This is a practice contrary to law and must not be continued. It is not merely a shadow but a matter of substance that a party should be called upon to give and should be enabled to state on oath as to what documents are relevant and are in his possession or power, before being called upon to give inspection thereof. The industrial tribunals are creatures of law, and therefore they are bound to follow the procedure laid down by law. They cannot evolve their own procedure in the case of discovery and inspection.

In *Shambu Nath and Sons Ltd. Vs. Additional Industrial Tribunal and Another*, it was held by the High Court of Punjab that the industrial tribunal must comply with provision of Order XI, Rule 18, Civil Procedure Code, before ordering production and inspection of documents and that an order passed by the industrial tribunal in contravention of Rules 15 and 18 must be quashed as beyond jurisdiction. A similar view was taken by the same Court in *Palace Cinema, Palace Cinema Vs. Rameshwar Dayal*, and *Shama Magazine, New Delhi Vs. The State of Delhi and Others*, I am in complete agreement with the view held in the above decisions and I hold that the orders in question are liable to be quashed on this ground alone.

4. Learned counsel for the petitioners also urged that respondent 2 failed to consider relevant aspects of the matter in passing the order. It was stated that the audited balance sheets and profit and loss accounts of these companies were accepted by the State Government, the Central Government and the Government of the United Kingdom for the purpose of assessment of the taxes and that the prayer should have been so lightly granted, as some of these documents are those which share-holders have got a right to inspect. It was also pointed out that the evidence adduced by respondent 1 before the tribunal did not warrant the production or inspection of these documents. These certainly are matters to be taken into consideration by the tribunal before passing an order for production of documents and inspection thereof. I do not consider it necessary to consider these aspects more elaborately at this stage as I am allowing the petition on the ground mentioned earlier. It is sufficient to say that in case an application supported by an affidavit is made by respondent 1 hereafter, respondent 2 should decide the matter in accordance with the principles laid down in the decisions cited above as well as other authoritative decisions on the point.

5. Sri Balagangudhara Menon, learned Counsel for respondent 2 stated that it appears from the records of the case that the petitioners have acquiesced in the order Ex. E. In the absence of a counter by either of the respondents raising such a plea, I do not consider it necessary or proper to express any opinion on the same.

6. In view of my finding that there is no proper application for production and inspection of documents by respondent 1, the order Ex. B as well as the notice

Ex. p must be and are quashed. The original petition is thus allowed but in the circumstances I make no order as to costs.