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**(1988) 04 KL CK 0013**  
**In the High Court Of Kerala**

Kathayee Cotton Mills Ltd.

APPELLANT

Vs

District Labour Officer and Others

RESPONDENT

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**Date of Decision :** 05-04-1988

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 10A, 11A, 12, 17

**Citation :** (1989) 1 LLJ 417

**Hon'ble Judges :** P.C. Balakrishna Menon, J

**Bench :** Single Bench

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## Judgement

P.C. Balakrishna Menon, J.—This original petition is to quash exhibit P-7 award of the 1st respondent, the District Labour Officer, Ernakulam, passed in pursuance of an agreement, exhibit P.5, to refer the industrial dispute for decision by the 1st respondent as arbitrator. Two workmen in the service of the petitioner company were dismissed from service after a domestic enquiry on the finding that the workmen were guilty of the misconduct charged against them. Respondents Nos. 2 and 3, trade unions, espousing the cause of the workmen raised an industrial dispute. While conciliation proceedings were pending before the Regional Joint Labour Commissioner, Ernakulam, both parties entered into exhibit P-5 agreement as (sic) the terms of which the dispute was to be referred for the decision of the District Labour Officer, Ernakulam. Paragraphs 1 and 2 of exhibit P-5 are extracted below:

(1) Both parties agreed to leave the following issue to the decision of the District Labour Officer, Ernakulam.

Issue: Whether the dismissal of Shri M.P. Simon and K.R. Joseph is justifiable or not? If not, to what relief they are entitled to?

(2) The management will submit the entire domestic enquiry file in respect of both workers before the District Labour Officer on 29th August, 1987. The management and the unions will appear before the District Labour Officer on 2nd September, 1987, at 11.00 A.M. for arguing their case and both sides are at

liberty to file written statements, if any. After the hearing, the District Labour Officer will give his decision immediately. The decision of the District Labour Officer will be final and binding on the parties and the parties will have no right to challenge his decision in any manner in any forum.

The District Labour Officer as per his award, exhibit P-7, found that the misconduct of the two workmen was not so serious as to merit their dismissal from service. They were accordingly directed to be reinstated in service on or before 1st October, 1987, without back wages. The period of their absence on account of the dismissal was not to be treated as break in service.

2. The management challenges this award on three grounds - (1) that the agreement is not published as required by Section 10A(3) of the Industrial Disputes Act, (2) the management was not given an opportunity to adduce evidence in justification of the action taken against the workmen, and (3) the award has become unenforceable for the reason of the failure to publish the same as required by Section 17 of the Industrial Disputes Act

3. There cannot be any doubt that the agreement, exhibit P-5, to refer the dispute to arbitration is one falling u/s 10A of the Industrial Disputes Act. Exhibit P-7 conforms to the requirements of Section 10A(1) of the Act. There was an industrial dispute existing and at a time before the dispute could be referred to the Labour Court or the Industrial Tribunal u/s 10, the employer and the workmen agreed to refer the dispute for arbitration by the 1st respondent and to abide by his decision, which, according to the agreement, is to be final and binding on both parties. Even though the learned Government Pleader, appearing on behalf of the 1st respondent, has raised a contention that the agreement, exhibit P-5, does not fall within the scope of Section 10A(1) of the Industrial Disputes Act, no such contention is raised by counsel appearing for the respective trade unions. The dispute between the parties related to the dismissal of two workmen. There cannot be any doubt that it is an industrial dispute. An industrial dispute can be resolved under the Act by a settlement in the course of conciliation proceedings u/s 12(3) or by a settlement otherwise than in the course of conciliation proceeding or by adjudication on a reference u/s 10 or by arbitration referring the dispute for decision by an arbitrator as provided for u/s 10A of the Act. It is clear from Sub-section (1) of Section 10A that the parties are free to agree to refer the dispute for arbitration at anytime before the dispute is referred u/s 10. Exhibit P-5 agreement arrived at during the conciliation proceedings did not settle the dispute between the parties. The dispute was left for decision by the 1st respondent. Such an agreement leaving the dispute for decision by an arbitrator does not amount to an industrial settlement during conciliation proceedings u/s 12(3) of the Act. The same is the view expressed by a Full Bench of the Madras High Court in *R.K. Steels v. Their Workmen* 1977 I LLJ 382. An agreement between the management and the workmen during conciliation proceedings to refer the issue relating to bonus for the decision for the Commissioner of Labour was held by the Full Bench in *R.K. Steel's* case as

one falling u/s 10A of the Act. I, therefore, overrule the objection by the learned Government Pleader that the agreement and the arbitration proceedings in the present case do not fall u/s 10A.

4. Both sides admit that there was no compliance with Sub-section (3) of Section 10A. Copy of the arbitration agreement was not forwarded to the Government and the Conciliation Officer and the agreement was not published in the Gazette as required by Sub-section (3). The requirements of Sub-section (3) are mandatory and a failure to comply with those provisions would vitiate the award. An arbitrator u/s 10A has the power to bind even those who are not parties to the agreement and it is in that context that publication of the agreement is made mandatory under Sub-section (3) of Section 10A. The Supreme Court in *Gujarat Steel Ltd. v. Its Mazdoor Sabha*, 1980 I LLJ 137 states at 157:

We may dilate a little more on Article 226 vis-a-vis awards of Arbitrators. The first limb of the agreement is that when there is a voluntary joint submission of an industrial dispute to an Arbitrator named by them u/s 10A of the Industrial Disputes Act, he does not function as a Tribunal and is not amenable to the jurisdiction of that Court under Article 227 or under Article 226. Without further elaboration this contention can be negated on a decision of this Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, . This Court observed that as the Arbitrator u/s 10A has the power to bind even those who are not parties to the reference or agreement and the whole exercise u/s 10A as well as the source of the force of the award on publication derived from the statute, it is legitimate to regard such an Arbitrator now as part of the infrastructure of the sovereign's dispensation of justice, thus falling within the rainbow of statutory Tribunals amenable to judicial review.

5. The above passage is a complete answer also to the contention by counsel for the respondents that no writ petition under Article 226 will lie against exhibit P.7 award.

6. Learned counsel for the petitioner challenges the award also on the ground that in spite of specific request contained in its written statement, exhibit P-6, filed before the arbitrator, no opportunity was given to the management to show that the dismissal of the two workmen was fully justified. The Supreme Court in *Gujarat Steel Tubes Ltd. 's case (supra)* states at pages 158-159:

Section 11A was introduced in purported implementation of the I.L.O. recommendation which expressly referred, inter alia, to arbitrators. The Statement of Objects and Reasons which illumines the words of the legislative text when it is half-lit, even if it cannot directly supplement the Section, does speak of the I.L.O. recommendations and, in terms of Tribunals and Arbitrators. When it came to drafting Section 11A the word "Arbitrator" was missing. Was this of deliberate legislative design to deprive Arbitrators, who discharged identical functions as Tribunals under the Industrial Disputes Act. of some vital powers which vested in their Tribunal brethren? For what mystic purpose could

such distinction be? Functionally, Tribunals and Arbitrators belong to the same breed. The entire scheme, from its I.L.O. genesis, through the Objects and Reasons, fits in only with Arbitrators being covered by Section 11A, unless Parliament cheated itself and the nation by proclaiming a great purpose essential to industrial justice and, for no rhyme or reason and wittingly or unwittingly, withdrawing one vital word. Every reason for clothing Tribunals with Section 11A powers applies a fortiori to Arbitrators. Then why omit? Could it be a syncopic omission which did not affect the semantics because a Tribunal, in its wider connotation, embraced every adjudicatory organ, including an Arbitrator? An economy of words is a legislative risk before a judiciary accustomed to the Anglo-Saxon meticulousness in drafting. We may easily see meaning by one construction. A "tribunal" is merely a seat of justice or a judicial body with jurisdiction to render justice. If an Arbitrator fulfils this functional role-and he does-how can he be excluded from the scope of the expression? A caste distinction between Courts, Tribunals, Arbitrators and othes, is functionally fallacious and, in our context, stems from confusion. The Section makes only a hierarchical, not functional, difference by speaking of Tribunals and National Tribunals. So we see no ground to truncate the natural meaning of "Tribunal" on the supposed intent of Parliament to omit irrationally the category of adjudicatory organs known as Arbitrators. To cut down is to cripple and the art of interpretation makes whole, not mutilates, furthers the expressed purpose, not hampers by narrow literality.

7. There can, therefore, be no doubt that an Arbitrator u/s 10A has got all the powers of a Tribunal u/s 11A of the Industrial Disputes Act. The Supreme Court in *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, has held that the arbitrator has jurisdiction to reappraise the evidence by virtue of the powers vested in him u/s 11A of the Act.

8. The award is also defective for the failure of the arbitrator to apply his mind. Except for the bare statement that he has perused the records, there is nothing in exhibit P-7 to indicate that the arbitrator had applied his mind to the evidence on record. There is no finding relating to the misconduct alleged against the two workmen. The arbitrator concludes they are first offenders. The concluding portion of the award, exhibit P-7 states:

Hence, it is difficult for me to believe that the misconduct done by the dismissed workmen was so serious and grave as to merit their dismissal from service. Moreover, the letters of dismissal do not indicate that these two workmen had any previous cases of any misconduct proved against them. Hence, I conclude that they are first offenders. In view of the above, I am defenitely of the opinion that the punishment given by the management is disproportionate to the gravity of the misconduct.

9. Whether the misconduct charged against the workmen had been proved is not considered by the arbitrator. The Supreme Court in *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, at 524):

It is equally well-settled that where a quasi-judicial Tribunal or Arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

10. The conclusion arrived at by the arbitrator in exhibit P-7 is only his ipse dixit without reference to the evidence on record and for that reason also the award, exhibit P-7, cannot be sustained.

11. Learned counsel for the petitioner has also a case that the award has become inoperative for the reason of failure of publication of the same as required by Section 17 of the Industrial Disputes Act. Apparently the arbitrator has proceeded on the basis that exhibit P-5 agreement does not fall u/s 10A(1) of the Act and hence the arbitration proceedings are not governed by the provisions of the Act. I have already held that the arbitration in the present case falls u/s 10A and a publication of the award is also mandatory u/s 17 of the Act.

12. For the aforesaid reasons, I quash exhibit P-7 award and direct the 1st respondent, arbitrator, to pass a fresh award in compliance with Section 10A of the Industrial Disputes Act, as expeditiously as possible. The 1st respondent, arbitrator, will forward copies of exhibit P-5 agreement to the Conciliation Officer and to the State Government for publication as required by Sub-section (3) of Section 10A before he proceeds to investigate the dispute under Sub-section (4).

13. The original petition is allowed as indicated above. No. costs.