
(1994) 06 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 10106 of 1994

Kerala State Elec. Board

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 08-06-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 18(3)

Citation : (1995) 70 FLR 1133 : (1994) 3 ILR (Ker) 429 : (1995) 1 LLJ 411

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, for the Appellant; M.V. Joseph and U.K. Rama Krishnan and Augustine Joseph, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Kerala State Electricity Board is the petitioner, Board challenges Ext. P5 order passed by the Labour Court, Ernakulam impleading the Board as an additional party in the array of management in Industrial Dispute No. 33 of 1986.

2. The short facts necessary for understanding the dispute raised in the Original Petition are as follows: - Second respondent was a licensee for distribution of electrical energy in Mattancherry area. Erstwhile Government of Cochin by notification dated November 12, 1929 granted the company the right of distribution of electrical energy for a period of fifty years. Respondent No. 3 and one C.K. Hariharan, whose legal representatives are respondents 4 to 8, were employees of the company. On the expiry of the period of licence granted to the second respondent, the Kerala State Electricity Board u/s 6 of the Indian Electricity Act gave notice to the licensee to sell the undertaking to it. In the process of the purchase, there were discussions regarding the future service conditions of the employees engaged by the licensee. As a result of that prolonged discussion, it was agreed that only those employees who opted to come to the service of the Electricity Board from among those employees who

have not attained the age of 55 as on November 11, 1979 and those who were in the rolls of the second respondent-company on or before August 24, 1978 if willing to work under the Board, will be taken over by the Board. Accordingly, the Board prescribed option forms and declaration forms of the employees who wish to come under the service of the Board. A total number of 111 employees submitted their options showing their willingness to come under the service of the Board. Third respondent and Sri C.K. Hariharan did not opt to come under the service of the Board. This is because Sri Hariharan had already completed the age of 55 years on the date of purchase by the petitioner and Sri Chellappan Pillai had less than a month to attain the age of 55 years on the date of the take over. Deceased Hariharan and third respondent then approached the Labour Court by moving a petition u/s 33C(2) of the Industrial Disputes Act claiming retrenchment compensation from the second respondent-company. Labour Court dismissed that petition, directing the petitioners before it to raise the industrial dispute against the company. Thereupon third respondent and deceased Hariharan filed petitions before the Deputy Labour Officer, Ernakulam for realising the retrenchment compensation from the second respondent-company. Since no settlement was arrived at, the matter was reported to the Government. Consequently, the Government referred the matter for adjudication by the first respondent-Labour Court. The issue referred was:

"Denial of retrenchment compensation to the workers Sarvashree C.K. Hariharan and S. Chellappan Pillai".

This claim of the workmen was against the second respondent namely M/s. Cochin Electric Company (P) Ltd. This reference made by the Government was entertained by the Labour Court as I.D. 33 of 1986. Before the Labour Court, second respondent-company filed M.P. No. 54 of 1987 for impleading the Kerala State Electricity Board as counter petitioner No. 3 in the array of management in the said industrial dispute. The Board filed detailed objection to the impleadment. After overruling the objection raised by the Board, first respondent-Labour Court allowed the petition of the second respondent-company by Ext. P5 order dated December 19, 1989.

3. Third respondent Sri S. Chellappan Pillai and late Sri C.K. Hariharan approached the Labour Officer for getting retrenchment compensation from the second respondent on account of the denial of employment. These employees had no case that they got any right against the Kerala State Electricity Board. They were the employees of the second respondent and second respondent alone. All the employees of the second respondent were not taken over by the Electricity Board when it took over the business. Only those employees who opted to come to the service of the Electricity Board from among those who had not completed the age of 55 as on November 11, 1979 and who were on the rolls for the second respondent-company on or before August 24, 1978 came under the service of the Board. Sri Hariharan had completed the age of 55 long prior to November 11, 1979. In the case of Chellappan Pillai, he had only less than a

month to attain the age of 55 as on November 11, 1979 because his date of birth is December 1, 1924. Sri Hariharan and Shri Chellappan Pillai did not opt to come under the Board. Therefore Hariharan and Chellappan Pillai did not have any right as against the Board. They approached the authorities for getting retrenchment compensation from the second respondent company. According to them, the second respondent alone was their employer. In such a situation can the Labour Court implead the Board and enlarge the scope of reference?

4. Section 18(3) of the Industrial Disputes Act has been relied on by the second respondent to support their claim to get the Board impleaded as an additional respondent. The said provision is in the following terms-

"18(3) - A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal, which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part thereof."

The power of the Labour Court cannot be exercised so as to enlarge the scope of the reference itself because its jurisdiction to deal with the dispute is derived solely from the order of reference passed by the Government u/s 10(1) of the Act. The Labour Court can consider the dispute specifically referred to it. It may also go into matters incidental to the said disputes. Disputes that are not incidental to the main issue referred cannot be gone into by the Labour Court, Labour Court cannot add parties to the reference to enlarge the scope of the reference in the purported exercise of its implied jurisdiction u/s 18(3) of the Act. While dealing with the jurisdiction of the Tribunal to implead parties before it, Their Lordships of the Supreme Court in *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, took the view that the tribunal can implead an additional party only if the parties named in the order of reference do not completely represent the interest by the employer or by the employee. What their Lordships stated is:- (p. 465)

"If it appears to the Tribunal that a party to the industrial dispute named in the

order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest."

This shows that the question to be gone into is whether new party is necessary to make the adjudication effective and enforceable. In other words, if the non-joinder of a party makes the proceedings, before the Labour Court ineffective and unenforceable, then and then alone can a third party to the order of reference be impleaded by the Labour Court.

5. In the proceedings before the Labour Officer, second respondent is not seen to have raised any contention that for a proper adjudication of the dispute between it and Sri Chellappan Pillai and Hariharan, Kerala State Electricity Board should be a necessary party. It was in such a situation that the Labour Officer reported failure of conciliation to Government. Before the Government, second respondent did not raise any contention that the Board was legally bound to pay retrenchment compensation to its employees. Had such a contention being raised it would have been open to the State Govt. to ask the Labour Court to consider the issue as to who was liable to pay the retrenchment compensation. When the Government did not choose to make such a reference, it was not proper on the part of the Labour Court to implead the Kerala Electricity Board at the instance of the company. The industrial dispute, if any, between the company and the Board is not one to be gone into by the Labour Court. In such a situation, I have no hesitation in holding that the Kerala State Electricity Board is not a necessary party which can be added or summoned under the implied powers of the Labour Court u/s 18(3) of the Industrial Disputes Act.

6. Learned counsel representing the second respondent-company brought to my notice the decision in Kerala State Electricity Board v. Rajamoni 1992 (2) KLT 66, and contended that this Court is not to interfere with an interlocutory order passed by the Labour Court, since the Board has right to challenge the final order that may be passed by the Labour Court. On going through the said decision, I feel that it has no application to the facts before me. In 1992(2)KLT 66, the Labour Court refused to summon certain documents which the opposite party wanted for decision. The impugned order in that case reads:-

"On examination of the petition to summon the documents and also the objection raised by the authorised representative of the workman and the contractor. I find that the documents now required to be summoned are not at all necessary for the adjudication of this dispute, in the light of the circumstances of the case. Hence the petition for summoning the documents is dismissed".

This Court took the view that as a consequence of this order if prejudice is caused while the final order is passed, that final order is open to challenge and so the correctness of the interlocutory order is not to be gone into at this stage. Without prejudice to the petitioner's right to raise all grounds raised in the

petition, if they are aggrieved at a later stage, the Original Petition was dismissed. According to me, that cannot be taken as precedent for not entertaining the Original Petition now before me. In this Original Petition, the order challenged is one impleading and additional party. Impleadment of that additional party is without jurisdiction. The Labour Court acted beyond its power u/s 18(3) of the Industrial Disputes Act. So, I do not think that 1992(2) KLT 66 is authority for denying jurisdiction under Article 226 of the Constitution in the instant case.

7. In view of what has been stated above, I allow this petition and quash Ext. P5 order. First respondent-Labour Court is directed to proceed with the reference as made by the Government in Ext. P3 order. Since the matter is a long pending one, the Labour Court should pass final order on I.D. 33 of 1986 as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this judgment.