

(1953) 12 MAD CK 0005
In the Madras High Court

K.N. Padmanabha Ayyar

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 17-12-1953

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 17, 20, 22, 26

Citation : (1954) 1 LLJ 469

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Judgement

Govinda Menon, J.—By G.O. Ms. No. 397, dated 28 January 1953, of the Development Department the Government of Madras, in

exercise of the powers conferred by Section 10(1)(c) of the Industrial Disputes Act, 1947, referred for adjudication to the industrial tribunal

having its place of sitting at Madras the industrial dispute between the workers and management of Messrs. Lakshmi Cafe, Madras, and this

application is for a writ of certiorari to quash that order on the ground that at the time the reference was made there was no industrial dispute

existing and that therefore the reference was without jurisdiction. The annexure to this Government order contains the several matters in dispute of

which item 6 was not in existence when the conciliation took place. The six matters in dispute referred to in the annexure are the following:

- (1) Fixation of scales of wages for different categories of employees.
- (2) Fixation of the quantum of dearness allowance in the place of boarding and lodging.
- (3) Fixation of number of days for sick, leave with wages in a year.
- (4) Fixation of the quantum of bonus for the years 1947, 1948, 1949, 1950 and

1951.

(5) Fixation of the quantum of gratuity.

(6) Whether the closure of the hotel in July 1952 and the discharge of workers are justified and if not, to what relief the discharged workmen are entitled?

2. In order to appreciate the points of view put forward on either side one has to refer to the antecedent history of the whole affair. On behalf of

the workers employed by the cafe, the Madras City Hotel Workers' Union of which most, if not all, of the workers were members, put up a

number of demands and since the union could not come to a settlement by direct negotiation the labour officer of Madras was approached for

conciliation proceedings and he undertook the task of conciliation on 21 March 1952 after issuing notice to the parties. During the conciliation

proceedings, the demands were discussed and the conciliation officer made certain recommendations. It is not necessary for the purpose of this

case to refer in detail to these recommendations which are contained in the letter of the conciliation officer, dated 29 May 1952, sent to the

Secretary to the Government, Development Department, through the Commissioner of Labour, Madras. The conciliation officer tendered advice

to both the management of the cafe as well as to the Madras City Hotel Workers' Union to dispassionately consider his recommendations and to

come to a decision. It is seen from his letter that the union representatives were willing to accept the recommendations provided there was

settlement on all the demands. The management expressed their inability by their letter, dated 14 April 1952, to accept the recommendations of the

conciliation officer. Therefore, by his letter dated 29 May 1952, the aforesaid conciliation officer submitted to the Government that conciliation has

failed in the dispute. A copy of this letter was submitted to the Commissioner of Labour and copies were sent to the proprietor of the Lakshmi

Cafe and to the Secretary of the Madras City Hotel Workers' Union. In the normal course of things the letter to the Government, dated 29 May

1952, sent through the Commissioner of Labour must have reached the Government within a week at the most and one of the important questions

for decision before me is the exact point of time at which this letter was received by the Government, because that is a crucial point which will have

to be considered in the interpretation of Section 20, Clause (b) of the Industrial Disputes Act, 1947, about this more will be said later.

3. After the management had expressed their inability to accept the recommendations made by the conciliation officer by their letter, dated 14 April

1952, on 2 May 1952 the proprietor of the cafe wrote a letter to the labour officer, Madras, who was the conciliation officer, asking for

permission to close the cafe. In that letter the proprietor says that owing to slump in the business and the high cost of foodstuffs they have been

incurring heavy loss in the business. Moreover they were also experiencing considerable trouble such as gross disobedience, disloyalty, non-co-

operation, indifference, etc., among the workers which resulted in further heavy loss. On account of this, the management stated that they have

decided to close down the coffee section only of the business from 8 May 1952 and permission was sought for that purpose. To this letter the

labour officer does not seem to have sent any reply. Therefore, on 15 June 1952 a notice was issued by the proprietor of the cafe to 26 workers

whose names are mentioned in the notice informing them that it was proposed to close the restaurant section of the cafe as and from 1 July 1952.

The workmen named there under and who were working in that section were informed that their services will be terminated from that day and they

were requested to contact the proprietor and get their accounts finally settled by that time. This notice has been served on the 26 workmen whose

names are given in the notice. Thereafter, on 29 June 1952 the management issued another notice informing the workmen that the restaurant

section of the institution would be closed with effect from 1 July 1952 and the workers were asked to receive their salary for the month of June

1952 and fifteen days' wages in lieu of leave according to the Factories Act for the year ending 30 June 1952, in full settlement of their accounts

on 1 July 1952. They were also requested to leave the premises of the restaurant peacefully after they received their wages with their belongings.

The workers were warned that if they resorted to any kind of unlawful behaviour the management would be compelled to take action against them

as the situation required.

4. It is the case of the petitioner that since then the coffee section has ceased to exist and therefore at the time the reference was made by the

Government to the industrial tribunal to enquire into the dispute there existed no dispute whatever as the cafe had been closed much earlier. These are the main allegations contained in the affidavit. In the first counter-affidavit filed by the Government it was admitted that the petitioner closed the hotel on 1 July 1952, but it is alleged that his action was reported to be purely an act of victimization of the workers for having raised the dispute and as such the management committed an offence u/s 22(2)(d) of the Act for which they should have been prosecuted u/s 26(2) of the Act, for lockout during the pendency of the conciliation proceedings. There was a further allegation that the hotel which had been closed was reopened on 8 September 1952 with new workers and in those circumstances it was an illegal lockout with a view to get rid of the old workers. In a latter affidavit by the present Assistant secretary to the Government Industries, Labour and Co-operation Department, there is the statement that the earlier counter-affidavit was not full, that the material facts had not been set out and that an unfortunate mistake had crept in paragraph 2 of the said affidavit because the city hotels had not been declared as "essential services" and that therefore the reference to Section 22 of the Act on the assumption that they are essential services was a mistake. In this affidavit reference is made to further attempts by the labour officer at the instance of the Commissioner of Labour for effecting conciliation as the original conciliation proved abortive on account of the refusal of the management to accept the advice. In his second attempt at conciliation the affidavit states that the labour officer was not successful. In his report to the Government, dated 11 August 1952, through the Commissioner of Labour the labour officer stated that the closure should be deemed to be lockout during the pendency of these disputes and therefore he recommended certain issues for adjudication. There were various other allegations in the counter-affidavit filed by the Assistant Secretary, some time after this case remained part-heard before me, as the affidavit is dated 3 December 1953, though the case was part-heard earlier. In this counter-affidavit it is nowhere stated that the report of the conciliation officer, dated 29 May 1952, was not forwarded or did not reach the Government immediately thereafter. All that is stated in paragraph 13 of that affidavit is that the closure was during the pendency of the conciliation proceedings which was finally reported to the Government on 11 August 1952. It

has to be remarked that this better, fuller and more detailed affidavit, dated 3 December 1953, is significantly silent as to the exact date when the

report, dated 29 May 1952, reached the Government. If as a matter of fact the report reached the Government before the closing of the hotel,

then there can be no illegal lockout during the course of conciliation proceedings. At the time when the case was taken up for hearing on 12

November 1953 there was a dispute as to whether the cafe had been re-started and was functioning. There fore appointed an advocate

commissioner Mr. B.R. Dolia to inspect the premises that same evening and report to the court before 10-45 a.m. the next day as to whether there

is a coffee hotel and restaurant functioning at No. 311 Mint Street. The commissioner submitted his report the next morning which contains a full

and detailed description of everything that he saw at the premises and which were going on there. Paragraph 9 of the report reads as follows:

In view of the various facts gathered as above and the appearance of the interior of the premises and the kitchen and considering the independent

evidence of the neigh-bours I am of opinion that the coffee and tiffin section of the Lakshmi Cafe seems to have been closed since a long time and

at present Lakshmi Cafe is not running coffee or tiffin section but only a meals section.

No objections have been filed to this report by either side and in view of the elaborate and exhaustive nature of the investigation by the

commissioner and his detailed report I am of opinion that at the time he made the inspection and for some months previously there had not been a

tiffin and coffee section at this cafe.

5. The question for consideration is whether at the time of the closure of the coffee and tiffin section of the cafe on 1 July 1952 there were in fact

any conciliation proceedings ; and if such conciliation proceedings were pending, whether such closure was illegal and hence the reference to the

industrial tribunal was valid or not.

6. Section 20 of the Industrial Disputes Act speaks of the commencement and conclusion of conciliation proceedings. Sub-section (2) is in the

following terms:

(2) A conciliation proceeding shall be deemed to have concluded

(a) where a settlement is arrived at when a memorandum of the settlement is

signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of

the board is published u/s 17, as the case may be, or

(c) when a reference is made to a court or tribunal u/s 10 during the pendency of conciliation proceedings.

7. What we are concerned is with regard to the conclusion of the conciliation proceedings. This is a case where no settlement was arrived at and

therefore the conclusion ended when the report of the conciliation officer was received by the appropriate Government or when the report of the

board was published u/s 17 as the case may be. As we are not concerned with the board and the publication of the report the only matter for

consideration is when the report of the conciliation officer was received by the appropriate Government which in this case is the State Government

represented by the Secretary, Development Department. As I have already remarked, there is no evidence whatever placed before me to show

that the report of the conciliation officer about the failure of the conciliation, dated 29 May 1952, was not received by the Government before 1

July 1952. In paragraph 5 of the revised counter affidavit it is stated that the labour officer again submitted his report, dated 23 July 1952, to the

Secretary to the Government, Development Department, through the Commissioner of Labour and that in the meanwhile on 5 July 1952 the

petitioner sent a letter to the labour officer stating that due to the obstructionist tactics of the workers he has decided to close the meals section also

from 1 July 1953. If as a matter of fact, according to the argument now put forward on behalf of the workers and the Government the report of the

conciliation officer, dated 29 May 1952, sent to the Government through the Commissioner of Labour did not reach the Government for a long

time, there would have been no difficulty in mentioning that fact in this counter-affidavit. Significantly enough the counter-affidavit is absolutely silent

as to the date on which the report, dated 29 May 1952, was received by the Secretary of the Development Department. It is clear from Clause

(b) of the Sub-section (2) of Section 20 of the Act that if the report of the conciliation officer was received by the Government before 1 July 1952,

then the conciliation proceedings should be deemed to have been concluded. As

there is no averment in the counter-affidavit that the report was not received before 1 July 1952 and as in the normal course of things a report sent to the Government by the conciliation officer, dated 29 May 1952, through the Commissioner for Labour should have reached the Government much earlier, I have no other alternative but to conclude from the evidence placed before me that there were no conciliation proceedings pending on 1 July 1952. If as a matter of fact there was no conciliation proceedings pending on 1 July 1952 and there was a closure of business on that day, then any subsequent attempt made by the Commissioner for Labour and the Government for effecting conciliation would not be effective as by that time the cafe had been closed and there can be no industrial dispute with regard to a business that was not in existence. So in my view, all the subsequent proceedings and correspondence taken by the Commissioner for Labour and the report submitted by him to the Government were done at a time when under the law there could have been no industrial dispute at all. If as a matter of fact the report had not been received by the Government earlier than 1 July 1952, paragraph 13 of the revised counter-affidavit would have been differently worded. I have therefore no doubt whatever that conciliation proceedings were not in existence on 1 July 1952.

8. Section 33 of the Industrial Disputes Act to which my attention was drawn by the learned Special Government Pleader relates to the alteration to the prejudice of workmen of the conditions of service applicable to them immediately before the commencement of such proceedings or the discharge punishment by dismissal or otherwise, of any workman concerned in such dispute during the pendency of any conciliation proceeding without the express permission in writing of the conciliation officer, board or tribunal as the case may be. If on the facts placed before me it has to be found that there were no conciliation proceedings on 1 July 1952, then Section 33 of the Act can have no application whatever. If Section 33 has no application, then Section 33A can conceivably have no application at all.

9. It is urged by Mr. V. Thyagarajan for the petitioner that after the closure of the business, it is not possible to initiate and continue any conciliation proceedings, because both Section 33 and Section 33A speak of such matters during the course of conciliation. He also relies upon a judgment

reported in Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another, . In that decision a Division Bench of this

Court has held that closing down a business even temporarily is distinct and different from lockout and an industrial tribunal cannot decide the

question whether an employer can close down his business and that the question is completely outside the scope of the Industrial Disputes Act and

the reference by the Government of such a subject was without jurisdiction and consequently no award can be passed on that. In the present case

the last item in the annexure to the order of reference, viz., whether the closure of the hotel in July 1952 and the discharge of workers are justified

and if not to what relief the discharged workmen are entitled, was inserted after the Commissioner of Labour reported to the Government by his

letter, dated 13 February 1952 recommending such an item also to be added to the order of reference by the Government. At page 370 of the

report in the case cited above, we have the following passage:

Apart from the constitutional aspect, we are also inclined to hold that the question whether an employer could or could not close down a business

permanently or temporarily falls outside the purview of the Industrial Disputes Act.

10. At another place the learned Judges say that if a citizen has a fundamental right to carry on business, it follows that he must be at liberty not to

carry it on if he so chooses. This decision has been commented upon and followed by Subba Rao, J., in Dindigul Skin Merchants Association v.

Industrial Tribunal (1952) F.J.R. 413 : 1952 II L.L.J. 584. In Letters Patent Appeal No. 226 of 1952, the learned Chief Justice has explained the

scope of the decision in Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another, . He was of opinion that if an

employer does not wish to discontinue the business but only to close down the place of business temporarily then the tribunal can go into the

question whether such closure is bona fide and for proper reasons or whether it was with the object of victimizing the workmen and coercing them

to accept his own terms. In view of this explanation what I have to find is whether the closing down was for purpose of victimization. Even in the

first notice, dated 2 May 1952, the petitioner has stated that owing to the slump in the business and high cost of foodstuffs the management has

been incurring heavy losses in the business; and moreover from the report of the commissioner it is clear that the business has been closed for a long time. If that is so, it cannot be said that the management has closed down the business with a view to victimizing the workmen and coercing them to accept their own terms. In the view which I take that at the time the closing down took place there was no conciliation proceeding pending and that the closing down was perfectly bona fide and probably due to the obstructionist tactics adopted by the workmen it cannot be said that there was any mala fides in the closing down. In these circumstances the order of the Government referring the matter to an industrial tribunal at a time when no dispute could have existed is without jurisdiction and is quashed. The petitioner will be entitled to his costs in this application including the commissioner's fee and expenses, The advocate's fee is fixed at Rs. 100.