
(1957) 02 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 326 of 1956 (E)

Krishna Kutty Nair

APPELLANT

Vs

Industrial Tribunal, Trivandrum

RESPONDENT

Date of Decision : 07-02-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 15, 18, 19, 2

Citation : AIR 1960 Ker 31

Hon'ble Judges : Varadaraja Iyengar, J

Bench : Single Bench

Advocate : R. Narayana Pillai, Government Pleader, T.C.N. Menon and K.R. Panicker, for the Appellant; G.B. Pai, P. Govindan Nair and K.V.R. Shenoi, for the Respondent

Final Decision : Dismissed

Judgement

Varadarajan Iyengar, J.—This is a petition under Article 226 of the Constitution filed by K. Krishnankutty Nair claiming to be the General Secretary of the Jumna Thread Mills Employees' Union, Koratty and calling in question, on behalf of the employees, the award dated 16-9-1956 passed by the first respondent, the Industrial Tribunal, Trivandrum in Industrial Dispute No. 106 of 1955. The Jumna Thread Mills (Private) Ltd., Koratty who are the employers and opposite party to the Industrial Dispute are im-pleaded as the 2nd respondent.

2. Early in May 1955 a series of industrial disputes arose between the 2nd respondent and their workmen represented by the Union, These disputes comprising 23 questions were referred u/s 10(1)C of the Industrial Disputes Act (Central Act XIV of 1947) to the 1st respondent, on 16-8-1955 as I. D. No. 105 of 1955. Pending this reference the Union raised 41 further demands and as the management did not agree, these demands were placed for conciliation before the Labour Commissioner on 30-5-1955. While so on 8-8-1956 the company took disciplinary action against some of the workmen in the course of which, they placed the petitioner, General Secretary herein and another under

suspension and also filed two Section 33 petitions for their dismissal.

On 16-8-1956 the Secretary of the Union gave a notice to the management calling for the cancellation of all the disciplinary proceedings and further requiring the grant of all the demands of the workmen till then made, within the next hour. The company failed to comply and the Union thereupon ordered a strike of all the workmen on and from that date. This strike was the twelfth in the course of the past two years and, in the Company's opinion, on as flimsy a ground as the rest. So the company felt that it was not wise or possible to carry on, unless better counsel prevailed through the rank and file and accordingly declared a lock out of the Mills on 21-8-1956. In between these two dates of strike and lock-out and apparently with foreknowledge of the Company's reaction, the President and Secretary of the Union and 24 other workmen, constituting what they called an action committee approached Mr. Panampilly Govinda Menon to intervene and bring about a mutual agreement between the workers and the company, leaving it to him to do all the needful.

Mr. Govinda Menon wanted to assure himself that the workmen would stay loyal to him and therefore got them to assemble in general meeting on 8-9-1956 and declare their attitude. In that meeting it would appear more than 800 of the 1004 workmen unanimously elected Mr. Govinda Menon himself as the President and one of themselves, V. K. Thomas as General Secretary, of their new "Jmmuna Thread Mills Labour Union". Compromise talks with the management soon followed with the result that an agreed remedy for all the pending disputes between the company and their workmen whether before die Tribunal or the Commissioner was arrived at

On 14-9-1956 when the main dispute I. D. No. 106 of 1956 came on for evidence in the usual course, a petition for withdrawal of the dispute accompanied by a statement containing the terms of settlement was filed before the Tribunal. Purporting to speak for the workmen the petitioner objected to the withdrawal of the dispute as above mainly on the basis that the move was unauthorised and was also against the real interests of the workmen. The Tribunal conducted an enquiry on the points raised and passed orders on 16-8-1956 allowing the petition for withdrawal. Later, on 22-9-1956 the Tribunal passed its award accepting the terms of the compromise and holding that there was no subsisting dispute to be decided by the Tribunal. The award was published in the Gazette dated 16-10-1956 and is filed here as Ext. C. It is this award that is attacked in these proceedings.

3. Before proceeding to set out the contentions of the petitioner it will be useful to extract the relevant terms of the compromise agreement which accompanied the petition for withdrawal.

"A change having taken place in the leadership and the outlook of the Union and the workmen being now desirous of comig to terms with the management, they have requested the management to lift the lock-out.

"The Management being anxious to maintain industrial peace for a period of at least three years, the parties have reached the following settlement:

TERMS OF SETTLEMENT

"1. In order to arrive at a speedy settlement both parties consider and agree that it is advisable that all outstanding disputes are settled by arbitration and further agree that Shri S. Govinda Menon be requested to act as arbitrator and failing him, the Parties agree to approach any other retired High Court Judge acceptable to both parties.

"2. The matters to be referred to Arbitration are:

(a) The issues covered by the reference in I. D. 106/55.

(b) The issues involved in the application by the Management regarding spooling piece-rates.

(e) The 41 demands raised by the Union in May 1956.

(d) The laying down of a formula for bonus from 1956 for the plan period.

"3. The other pending Section 33 petition will be dealt with according to law.

"4. The decision of the arbitrator will be final and binding on the parties for a period of three years and the workmen agree not to raise any issues involving financial commitments during that period.

"5. The workmen disown all malicious and untrue statements made by the previous union leadership.

"6. The Union agree to shift its office from inside the Mill premises and vacate the same within four months from this date.

"7. The parties agree to withdraw all pending disputes before the Honourable Industrial Tribunal, Trivandrum, in terms of this settlement by filing a joint petition to that effect.

""8. The Management agree to lift the lock-out as soon as a majority of the workmen endorse in writing this agreement provided that the lock-out will be lifted only in respect of those workmen who endorse in writing this agreement.

"9. The Management reserves the right to take appropriate action under the Standing Orders and the law against those workmen found guilty of misconducts under the company's Standing Orders."

Then followed the signatures of Mr. R. M. Sellers, the Mill Manager as representing the management and of Messrs. P. Govinda Menon and V. K. Thomas describing themselves respectively as President and General Secretary of the Jumana Thread Mills Labour Union, as representing the workmen. The petition for withdrawal, it may be added here, was signed by Messrs. R. M. Sellers and V. K. Thomas alone, as representing respectively the management

and the workmen.

4. A large number of grounds are raised in the affidavit of the petitioner herein in support of the writ petition but the main points stressed before me are two-fold. Firstly, that the award was wanting in jurisdiction and proper procedure in that it did not terminate the dispute between the parties on the merits by application of Industrial Law and finally but left all pending matters of difference for disposal in the future by arbitrator under the Indian Arbitration Act, 1940, and on basis of ordinary civil law. This it was urged, was calculated to prejudice the workmen very considerably.

Secondly that the compromise settlement and the petition for withdrawal were unauthorised and unfit for entertainment because the legitimate representatives of the workmen were not parties thereto. The recognition of fresh labour union and its authorities in the present matter by the management, it was submitted) was with a view only to dismiss the petitioner,--General Secretary of the existing union who was very inconvenient from their point of view and that again without risk of penalty attaching to themselves u/s 31 of the Act.

5. The petition is resisted by the company and also by V. K. Thomas as representing the new Labour Union who had obtained permission of court to intervene, on practically identical grounds. According to them the majority of workmen were behind the decision taken by the Employees' Union leaders and were eager to have a peaceful settlement of the entire dispute. The company for themselves only wanted to preserve their right in the matter of disciplinary action subject always to the legal safeguards available to the workmen. Hence the compromise reserving the mutual rights and also providing for its operative effect if and only if the majority of the workmen expressed their individual assent.

They claimed that from the very day next after the award, viz., 17-9-1956 the lock out had been lifted and the Mill had been functioning satisfactorily with all the 1004 workmen except a handful numbering less than a dozen. They denied that there was legal impediment as alleged to the acceptance of the compromise terms by the Tribunal and the passing of the award accordingly. The petitioner had indeed no locus standi to complain in any representative capacity or even on his individual behalf. His only purpose in opposing the compromise before the Tribunal and further in pursuing the matter by this writ motion was to shield himself as long as possible against the disciplinary action taken against him by the company. They submitted that even assuming that technical formalities were as regards particular detail not strictly attended to, that had only to be overlooked so as not to disturb the over-all industrial peace that had been achieved by the settlement.

6. The first question for consideration is whether the Tribunal acted without jurisdiction in allowing the withdrawal of the dispute before it for purpose of adjudication by a private arbitrator on basis of a compromise between the parties. Learned counsel for the petitioner drew my attention in this connection

firstly to the definition of "award" in Section 2(b) as meaning a determination "by an Industrial Tribunal of the industrial dispute, secondly to the duties of a Tribunal u/s 15, to hold its proceedings expeditiously and "as soon as practicable on the conclusion thereof to submit its award to the appropriate Government and lastly to Section 19 dealing with the period of operation of awards whereby the award will normally remain in operation for a period of one year but the appropriate Government may reduce or extend such period subject to certain limitations.

The argument was that an award was like a piece of legislation by delegation and a sub-delegation of such jurisdiction as here, to stranger authority, must be deemed to be prohibited. Learned counsel suggested that the matter may possibly be different if the Tribunal had retained control over the arbitrator's proceedings so as in the end to adopt according to its discretion, the award of the arbitrator as its own and be contrasted the position under Charter XT of the Bombay Industrial Relations Act, 1946 (Act XI of 1947) and the new provision Section 10-A introduced by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act XXXVI of 1956.

7. Now, it is the elementary right of the parties to a dispute to adjust their matters of difference wholly or in part by any lawful agreement or compromise. And every authority entrusted with the task of adjudicating the dispute has a duty, not a discretion to record such agreement or compromise subject possibly to an inherent power of refusal when substantial injustice would be worked. A tribunal, therefore, to whom an industrial dispute is referred for adjudication u/s 10(1)(C) of the Industrial Disputes Act, must record a lawful agreement or compromise placed before it by the disputants. There is nothing in the Act to suggest that a particular class of agreement or compromise is outside its scope, though whether a particular compromise is lawful or not will vary with the varying character of different disputes.

The expression "determination" in the definition of "award" in the Act indicates only a coming to an end, may be in any way whatever, though it may require examination and choice. What then is the difficulty when contending parties before the Tribunal settle their outstanding disputes amicably between themselves and ask the Tribunal to strike off "the reference or in different context, where they decide upon a machinery of their own choice for resolving their differences and require the Tribunal to sanction a withdrawal on such basis? The most that could possibly be said, is that the agreement or compromise placed before the Tribunal for acceptance should not involve anything improper, illegal or prima facie unjust from the point of view of the exercise of the overwhelming power of the employer against the workmen.

8. In this case there had been a change in the leadership of the union pending adjudication, the representative character of which was seriously opposed by the leadership on record. The Tribunal therefore thought it proper to institute a through enquiry into the circumstances which led to the compromise, the

contents of the compromise, the competency of the sponsors of the move to enter into an agreement and how the same, if accepted, would affect the industry and the workmen.

And it finally found (i) that the terms of the compromise were fair in the sense that they were to the manifest advantage of the workmen, (ii) that the signatories in the agreement had the right to represent the workers or in other words they had the backing of the large majority of the employees in the Mill. It thus emerges that the Tribunal had jurisdiction in the matter and also bestowed judicial consideration in its disposal. If so, there could hardly survive, any cause for complaint on the score urged, of lack of jurisdiction and improper procedure.

9. The case in Poona Mazoor Sabha Vs. G.K. Dhutia and Another, referred to by the learned counsel does not really support his position, That was a case where the jurisdiction of a conciliation court under the Industrial Disputes Act to record a settlement already arrived at between the parties was questioned on the ground that the existence and apprehension of industrial dispute which alone gave jurisdiction to the conciliation officer had come to an end with the settlement arrived at. It was held however that the industrial dispute ceased to exist under industrial law not by the private agreement of the parties but only by the imprimatur granted to it by the conciliation. Chagla C. J. no doubt observed during the course of the judgment that:

"Industrial law takes no notice of any private settlement or agreement arrived at between the parties in the course of an industrial dispute. Such a private agreement belongs to the realm of contract; it may give rise to contractual rights; but when we are dealing with industrial law it has no sanction whatsoever."

But the emphasis was on the inefficacy of the private agreement by itself to terminate the industrial dispute. For industrial dispute does not end until a settlement is arrived at, which settlement has been given a binding effect under the provisions of S, 19(2). The observation of the learned Chief Justice in another portion of the judgment is however useful for our present purpose.

"Industrial peace demands that sanctity should be attached to agreements freely arrived at by the parties and if the view went abroad that private settlements have no sanctity whatsoever, then there would be little chance of disputes ending by settlement between the parties. It will indeed be extremely unfortunate from the point of view of labour." "

10. The anxiety of learned counsel would really appear to be that the arbitrator under the compromise will not be bound by any law and is not bound to follow any reasonable standard of social justice or industrial law, and that the acceptance! of the compromise was likely to unleash a chain of never ending industrial disputes. And he brought to my notice the distinction between commercial and industrial arbitration as pointed out by Ludwig Teller (Labour Disputes and Collective Bargaining) Vol. I, page 536:

"Industrial arbitration may involve the extension of an existing agreement, or the making of new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements."

This distinction does exist and there is no doubt that an Industrial Tribunal is not so fettered as a court of law and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice and victimisation. But it seems to me that the apprehensions of learned counsel are rather unjustified. For the motivating idea of the parties here would appear to have been only to maintain what may be called an industrial truce for a reasonable period, say, three years, but at the same time without sacrifice of any of the rights of the workmen. It is in fact in this perspective, that the Tribunal itself found that each one of the clauses of the compromise terms would work to the manifest advantage of the workmen in the long run.

There is therefore no substance in this contention as well.

11. The next question concerns the competency of the President and General Secretary of the "Jumna Thread Labour Union" to represent the workmen in the matter of the compromise and the withdrawal of the industrial dispute. Learned counsel referred me to the bye-laws of the Union under which none other than a workman could be its President and argued that the election of Mr. P. Govinda Menon as President was on this single ground ineffective. He also questioned the validity of the general meeting of the workmen which elected the President and the General Secretary because it was convened without the necessary interval of three days. The Tribunal got over the difficulty by saying that it was open to the general meeting to modify or rescind any bye-law and it may be deemed to have so done in the process.

It seems to me however unnecessary to consider and pronounce upon this aspect in view of the fact that all the workmen except a handful have, soon after the award herein was passed, specifically expressed their acceptance of its terms and on that basis were allowed to rejoin, the Mill and function as usual. The question of the representative capacity of particular individual cannot therefore arise. In *Burmah Shell Employees' Association, Calcutta v. Burma Shell Oil Storage and Distributing Co. Ltd.* 1955 Lab AC 787 (LATI--Cal.), a Labour Union sought to repudiate the settlement of a dispute as regards bonus between the employer and another union which claimed to represent the workers. But the workmen had all received payment pursuant to the settlement and in satisfaction of the bonus claim. The Tribunal (at Calcutta) observed:

"There was no fraud, no misrepresentation, no undue influence. There is no evidence by the workmen that pressed by need, they accepted payment. When the participants (workmen) ratify an agreement by receiving payment or apart

from the agreement, receive payment in full satisfaction of their claim the agent cannot in the absence of something invalidating the settlement, be permitted to challenge the settlement merely on the ground that they have not accepted it, except in cases where such acceptance is necessary. When the principal agrees to certain matter, the agent have no locus standi to object merely because they happen to be agent."

There appears also to be a personal estoppel against the petitioner in urging the present contention. For hG was one of the members of the "action committee" which had appealed to Mr. P. Govinda Menon to intervene in the dispute and do all the needful to bring about approachment. And again according to his own case he had prevailed on the workmen one and all, to accept the award !n terms of Clause 8 therein. And finally it should not be forgotten that

"Courts should not be astute to discover formal defects and technical flaws to overthrow settlements peacefully and quickly arrived at within the framework of the Act. For after all the adjudication by the Tribunal is only an alternative form of settlement of the dispute on a fair and just basis having regard to the prevailing condition of the industry. The public need requires more and more production and if any settlement arrived at between the management and the workmen conduces there to that is an end which the Court will welcome and no amount of technicality need stand in its way." State of Madras Vs. C.P. Sarathy and Another, .

It follows that there is no substance in this contention as well.

12. During the course of his argument learned counsel constantly dwelt on what he styled the sole object which animated the management and which they achieved by the withdrawal of the dispute from the purview of the Tribunal, viz., to victimise the petitioner by discharge or dismissal without risk of prosecution for contravening Rule 33(b) of the Act. But this argument is totally ill-founded. For, as observed in Atherton West and Co. Ltd. Vs. Suti Mill Mazdoor Union and Others, the only scope of the enquiry (on a sanction petition u/s 33) and the effect of the written permission, was not to validate the discharge or dis-missal but merely to remove the ban on the powers of the employer, his agent or manager to discharge or dismiss the workmen during the pendency of the proceedings.

"But once the employer, his agent or manager excrcised his discretion to discharge or dismiss the workmen the industrial dispute within the meaning of the definition contained in Section 2(k) of the Industrial Disputes Act, 1947 would arise and the work-men who had been discharged or dismissed would be entitled to have that industrial dispute referred for enquiry, That right given to the workmen by the terms of the Industrial Disputes Act would remain unaffected."

The complaint raised by the learned counsel that the petitioner would be without remedy if after the award herein, action is taken against him by way of discharge

or dismissal seems, to be merely illusory.

13. The petition fails in the result and it is therefore dismissed but in the circumstances I make no order for costs.