
(1956) 04 MAD CK 0020
In the Madras High Court

Krishnamurthi (M.K.)

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 09-04-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1956) 2 LLJ 238

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—This is an application under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the award of the

industrial tribunal, Madras, dated 7 September 1953.

2. The petitioner was the sole proprietor of the business, which he carried on under the name of Photo Litho Press, Madras. On 29 February

1953, the workers through their union made certain demands of their employer, the petitioner, which he did not comply with. Conciliation

proceedings were commenced under the Industrial Disputes Act on 26 March 1953. During the pendency of those proceedings, on 11 April

1953, the petitioner issued a notice in the following terms:

Owing to my domestic and other circumstances. I am unable to run the press for some time. I regret to inform all the employees of the press that

their services will not be required from today. They will however be paid one month's wages in lieu of notice and may receive the wages due to

them up to date from the office on Tuesday, the 14 instant. Such of those who have uncompleted work on hand will please complete it as early as

possible and then stop away.

The conciliation officer eventually reported failure to effect a conciliation between the employer and the employees of the Photo Litho, Press. On 7

July 1953, the Government of Madras exercised its powers u/s 10(1)(c) of the Industrial Disputes Act XIV of 1947. The industrial dispute

referred to the industrial tribunal, Madras, for adjudication was:

whether the closure of the factory on and from 11 April 1953 is justified and if not, to what compensation the workers are entitled.

3. The award of the industrial tribunal, Madras, dated 7 September 1953, which was published in the Fort St. George Gazette, dated 30

September 1953, was printed in 1954 I L.L.J. 107 [Madras Press Labour Union v. Photo Litho Press, Madras]. The tribunal rejected the plea of

petitioner that it was a case of discontinuance of business by its owner, and that such discontinuance could not constitute an "industrial dispute" at

all. The tribunal found that the petitioner failed to prove his case that there was a sale of his business to a limited liability concern which was

incorporated under the name of the Photo Litho Press, Ltd. The tribunal upheld the plea of the workers that in effect the notice issued by the

petitioner on 11 April 1953 constituted a declaration of a lockout, and that the lockout was illegal. The reliefs granted by the tribunal to the

workers may be left out of consideration, as they do not affect the determination of the question at issue before me whether what was referred by

the Government on 7 July 1953 is an "industrial dispute" at all within the meaning of the Industrial Disputes Act.

4. Though the description of the dispute by the Government in the order of reference it issued under (?) Section 10(1)(c) of the Act cannot by itself

conclude the question at issue, the Government did in express terms ask the industrial tribunal to decide whether the closure of the petitioner's

business was justified or not. Whether the closure of the petitioner's factory on 11 April 1953 constituted a discontinuance of business, which was

the plea of the petitioner, or, whether it amounted to an illegal lockout that was the plea of the workers, was thus one of the questions the industrial

tribunal had to decide. If it had been a case of discontinuance of business by its owner, that would not have amounted to an industrial dispute as

defined by the Industrial Disputes Act. A Division Bench of this Court consisting

of the learned Chief Justice and Venkatarama Ayyar; J., made that clear in the Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another, . The scope of that decision was explained by the same learned Judges in L.P.A. No. 226 of 1952. The decision in that case was in Jaya Bharat Tile Works, Samalkot, Madras State Vs. The State of Madras and Others, . It was not the claim of the petitioner that what he did on 11 April 1953 was to close down his business, that could not oust the jurisdiction of the industrial tribunal to proceed with the adjudication. The counter-claim of the workers was a lockout and an illegal one at that. If the petitioner had proved his claim and established that it was case of discontinuance of his business, the tribunal could have no jurisdiction to treat that as an industrial dispute and go further into the question, whether such a closure was justified or not. If, however, it was proved to be a lockout, obviously the tribunal had the jurisdiction to go into the further question, whether that lockout was justified or not. That would have been well within the terms of the reference u/s 10(1) of the Industrial Disputes Act, dated 7 July 1953. So it was a jurisdictional issue that the industrial tribunal had to decide whether the closure under the notice dated 11 April 1953 was one of the business itself or only of the place of business. The fundamental difference between the two was explained by the learned Chief Justice in Jaya Bharat Tile

Works v. State of Madras:

A lockout is different from the discontinuance of a business. Occasionally some confusion is caused by the use of the word "closing." Lockout does not mean closing down of a business. It only means the closing down of the place of business. It means the suspension of work, not a discontinuance of the carrying on of the business. It means the refusal by an employer to continue to employ the persons employed by him and not the refusal to an employer to carry on any longer his business.

5. The learned Chief Justice then referred to the passage in his earlier decision in Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras (1951) 3 F.J.R. 420, where this difference had been explained, and he summed up the position thus:

In other words, closing down of a business is different from the closing of a place of business.

The industrial tribunal held that the petitioner had failed to prove that he had discontinued his business. It is further held it was an illegal lockout that

he had declared. Of course, a statutory tribunal cannot give itself jurisdiction by deciding wrongly a jurisdictional issue of this kind. It is, however,

unnecessary to embark now on a detailed examination of the limits of interference in proceedings under Article 226 of the Constitution with the

finding on such a jurisdictional issue by a statutory tribunal. What the tribunal recorded was:

the only evidence placed before me in proof of a company having taken the place of the original proprietor of the press for the purpose of running

it is Ex. M. 12. This document purports to be a printed copy of the memorandum and articles of association of a company known as the Photo

Litho Press, Ltd. There is nothing to show whether any such company has actually come into existence and if so, where and from what date it is

functioning. If it is a limited company it would have been registered under the Companies Act and proof of it could have been easily tendered,

especially as the proprietor of the Photo Litho Press claims to be the managing director of the company.

With reference to another piece of evidence, Ex. M. 1, the tribunal recorded:

No doubt, Ex. M. 1 is filed to show that the proprietor of the Press has sold eleven articles to the Photo Litho Press, Ltd. But the document does

not specify by whom when and for what amount they were sold and the purpose for which the sale was effected.

After a reference to another document, Ex. M. 10, the tribunal said:

In short on the materials which the management has chosen to place before me, I find it impossible to hold that there has been any sale of the

Photo Litho Press to any company and that the business which is now being carried on in the premises of the press is being run, not by its previous

proprietor but by a different entity. As the evidence on record stands, it seems to me that the case of sale of the press to a limited company

whereof the proprietor of the press is the managing director, has been put forward merely as a device to get over the consequence of not taking

back the workers, who were sought to be discharged.

6. Learned Counsel for the petitioner urged that it could not be denied before me and was in fact not denied by the learned Counsel for the

Workers" Union that the company had been incorporated and a certificate of incorporation had been obtained on 2 June 1953. Learned Counsel

for the petitioner further urged that it was not open to the workers to deny that the business that the petitioner had carried on now belonged to the

company. It is not for me to decide the necessary questions of fact on the materials the petitioner cannot produce; nor is it permissible for me to

decide on such fresh material, whether the decision of the industrial tribunal was right, Whether the findings of fact arrived at by the tribunal are

correct on the material placed before it is the limited question I have to answer. That can be answered only in the affirmative. The petitioner has

only himself to blame for his failure to place before the tribunal the evidence, which he had in his possession all along to prove his contentions (i)

that the Photo Litho Press, Ltd., an incorporated company, came into existence on 2 June 1953: (ii) the petitioner had sold the business that he had

carried on to this company. It was only after such proof that the tribunal could have been called upon to investigate the plea of the petitioner, that

he had discontinued his business. Even the certificate of incorporation was not produced before the industrial tribunal. From the records it appears

that the Workers" Union called upon the petitioner on 11 August 1955 to produce certain documents, which the workers claimed were in the

possession of the petitioner. That demand the petitioner resisted. He even declined to produce the articles of association of the Photo Litho Press,

Ltd. He categorically stated that there was no memorandum of agreement or sale deed but that there was only a confirmation letter. Even that letter

the petitioner does not appear to have tendered in evidence. Even if there was no sale deed as such, the petitioner could well have proved the

factum of sale of any of its assets by producing the account books of the company. Even that he did not do. It is rather unfortunate that even the

existence of the company, an easily provable fact, was left in doubt by the laches of the petitioner. Where there was a sale and what were the

terms of the sale were slightly more difficult questions, but even on this no evidence was offered by the petitioner. In the circumstances of the case,

it is clear that he withheld from the tribunal, evidence which was in his possession. Apparently the petitioner contented himself in the proceedings

before the tribunal by relying on the decision of this Court in *Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras (1951)* 3

F.J.R. 420 to support his contention that there had been a closure of his business. The petitioner overlooked the necessity of proving the necessary facts to prove his contention.

7. In this state of evidence, or rather absence of evidence, the findings of fact recorded by the industrial tribunal, extracts of which I have furnished above, do not call for any revision, even if that were permissible. The inference that the industrial tribunal drew from these facts, that there was no discontinuance, necessarily followed. That should suffice to discharge the rule nisi and dismiss this petition.

8. The learned Counsel for the respondent urged that the petition should be dismissed without an investigation of the merits of the case on the short

ground that the petitioner was not entitled to invoke the jurisdiction vested in this Court by Article 226 of the Constitution without availing himself

of an effective statutory remedy, a right of appeal to the Appellate Tribunal u/s 7 of the Industrial Disputes (Appellate Tribunal) Act, Act XLVIII of

1950. Learned Counsel for the petitioner contended that the petitioner was bona fide under the impression that he could not prefer an appeal and

call upon the Appellate Tribunal to decide whether the closure he had effected on 11 April 1953 constituted an industrial dispute at all. Learned

Counsel for the petitioner relied on the observations of the learned Chief Justice in *Indian Metal and Metallurgical Corporation v. Industrial*

Tribunal, Madras (1951) 3 F.J.R. 420 :

A preliminary objection was also taken to the maintainability of the application because there was an appeal against the award to the Labour

Appellate Tribunal.

There is no substance in the preliminary objection. The appeal will obviously be confined to the merits of the case. We doubt if the Appellate

Tribunal has the power to declare the reference by the Government to be invalid or to hold that the Industrial Disputes Act itself is invalid or

otherwise. In any event, the question which has been raised before us, namely, whether the owner of a business can be compelled to continue it

against his will could not have been decided by the Appellate Tribunal.

9. Those questions were obviously left open for determination. As I understand the scope of those observations, the learned Judges did not pose

as one of the questions that might possibly arise for determination, whether the

Appellate Tribunal could decide whether what was referred for adjudication u/s 10(1)(e) of the Industrial Disputes Act was an industrial dispute at all. Nonetheless, in this case, when the petitioner has otherwise failed, I can well refrain from answering the question, whether the decision of the industrial tribunal on such a jurisdictional issue, whether what was referred to it was an industrial dispute at all, is appealable u/s 7 of the Industrial Disputes (Appellate Tribunal) Act, Act XLVIII of 1950.

10. The rule is discharged. The petition is dismissed with the costs of the second respondent. Counsel's fee Rs. 100.