

(1979) 03 MAD CK 0009
In the Madras High Court

Madras Machine Tools Mfres.

APPELLANT

Vs

Spl. Dy. Commissioner of Labour and Another

RESPONDENT

Date of Decision : 07-03-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10A, 12, 17A, 2

Citation : (1979) 2 LLJ 331

Hon'ble Judges : Sathiadev, J;Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—This writ petition is for certiorari to quash the award dated 5th November, 1977, of the first respondent. The petitioner is

engaged in the manufacture of lathes and textile machinery having its factory At 8/146-B, Tiruchy Road, Singanallur Post, Coimbatore-5. It has a

complement of about 250 permanent workmen. Over and above this, the petitioner also used to engage temporary workmen out of a pool of 100

temporary workmen depending upon the exigencies of work. The employment of temporary workmen was only for specific periods and at the end

of each such period, their employment would automatically come to an end. In the years 1973 and 1974, owing to recession in the engineering and

textile industry and power shortage, the petitioner was obliged to lay-off its permanent workmen for many days and consequently there was no

scope for employment of any of the temporary workmen. An industrial dispute was raised with regard to the non-employment of 20 out of 100

temporary workmen and the said dispute was referred to the Labour Court, Coimbatore, as Industrial Dispute No. 7 of 1974. By the time the

dispute was ripe for hearing, the position slightly improved and there were

opportunities for engagement of temporary workmen. In fact, among the temporary workmen engaged, 10 were covered by Industrial Dispute No. 7 of 1974 and they were provided with employment. But there was also an agreement to provide employment for 10 other temporary workmen. However, only six turned up for work.

2. On and from April, 1975, due to lack of orders and unsatisfactory financial position of the petitioner, work could not be provided even to the

permanent workmen. Naturally, the temporary workmen also could not be engaged. 50 temporary workmen filed claim petition before the Labour

Court claiming lay-off compensation from 25th April, 1975. The Labour Court, Coimbatore, passed orders on 13th July, 1976, holding that these

temporary workmen had not put in one year of continuous service within the meaning of Section 25B of the Industrial Disputes Act (hereinafter

called as the Act) and hence they were not entitled to lay-off compensation u/s 25C of the Act. The Labour Court further found that these

workmen had not reported themselves to work on all days during the period for which lay-off was claimed. Ultimately, their claims were rejected.

3. Sixteen of the temporary workmen who were parties to the dispute in Industrial Dispute No. 7 of 1974, raised an industrial dispute claiming lay-

off compensation for their non-employment from 25th April, 1975. On 8th January, 1977, a settlement was reached before the Deputy

Commissioner of Labour, Coimbatore, where the parties agreed to refer the following issue for the arbitration by the Special Deputy

Commissioner of Labour, Madras, the first respondent herein:

Whether the sixteen workmen mentioned in the annexure ought to have been provided with regular and continuous work from 25th April, 1975,

and thereafter, if so whether they are entitled to lay-off compensation for the period on or after 25th April, 1975.

4. An agreement was signed before the Deputy Commissioner of Labour, Coimbatore, on 8th January, 1977, and thereafter, an award came to be

passed on 5th November, 1977. It is the validity of this award which is now questioned before us.

5. According to the writ petitioner, this award is invalid because a copy of the agreement entered into u/s 10A(1) was not forwarded to the

Government for consideration and publication in the official Gazette as required u/

s 10A(3). There was no notification u/s 10A(3A). Further, the award does not become enforceable for want of publication u/s 17A of the Act. In support of this submission, the learned Counsel for the writ petitioner cites the decision of the Mysore High Court reported in *Workmen of Madras Woodlands Hotel v. K. Srinivasa Rao* (1972) 42 F.J.R. 223 and also the decision in *Rasbehary Mohanty v. Presiding Officer, Labour Court* (1974) 45 F.J.R. 474. Further citation is made of the decision of the Madhya Pradesh High Court reported in *Singh (K.P.) and Another Vs. Gokhale (S.K.) and Another*, . Lastly, our attention is drawn to a Full Bench judgment of this Court reported in *R.K. Steels (P) Ltd. v. Their Workmen* 1977 I L.L.J. 382. On these decisions, it is contended that the violation of the statutory requirements u/s 10A and Section 17A read with Rules 26, 27 and 27A of the Tamil Nadu Industrial Disputes Rules, would render the award invalid and unenforceable.

6. The question that arose before the Full Bench was whether an award u/s 10A of the Act would be amenable to writ jurisdiction under Article 226 of the Constitution of India. The question whether as to what is the effect of non-compliance with the specific provisions of Section 10A(3) and (3A), did not come up for consideration in that case. However, a reference is made to Section 10A(3) and it is held that the non-compliance with the same would not render the agreement invalid. Even assuming that the decision is an authority for this position, the scope of the decision cannot be extended to the awards u/s 10A. In any event, therefore, so far as there is no valid award much less, an enforceable award, the claim petitions which have been filed pursuant to the award are invalid.

7. As against this Mr. N.G.R. Prasad, learned Counsel for the second respondent, strenuously relying upon the Full Bench decision contends as under:

(1) The question that arose before the Full Bench was about an award u/s 10A of the Act being amenable to writ jurisdiction and nothing more than that.

(2) If the ruling of the Full Bench has to be accepted and this Full Bench being bound by the said decision, in so far as the Full Bench has held that

the non-compliance of Section 10A(3) of the Act would not render the arbitration agreement illegal, the scope of this decision must be logically

extended to Section 10A(3A) and to other subsections of Section 10A.

(3) In any event, if Section 10(3) is held to be directory, equally so will be Section 10A(3A) and Section 10A(4A). Perforce the same argument

would apply to Section 17A; and, lastly, the argument made before us is that this being an agreement u/s 12(3), it is not amenable to writ

jurisdiction. However, in view of the Full Bench decision, the above submissions are made without prejudice to this submission.

8. In order to appreciate the respective contentions, let us refer to the relevant statutory provisions in this regard. Section 2(b) contains the

definition of award, which reads thus:

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial

Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10A.

Section 10A and its related Rules 26, 27 and 27A of the Tamil Nadu Industrial Disputes Rules, 1958. Section 10A reads thus:

10A. (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they

may, at any time before the dispute has been referred u/s 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the

dispute to arbitration and the reference shall be to such person or persons (including the Presiding Officer of a Labour Court or Tribunal or

National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the

appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of

the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(2) An arbitration agreement referred to in Sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may

be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the Conciliation Officer, and the appropriate

Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in Sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the -arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4A) Where the industrial dispute has been referred to arbitration and a notification has been issued under Sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(5) Nothing in the Arbitration Act, 1940, shall apply to arbitration under this section.

Rule 26 runs as follows:

Arbitration agreement.--An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form "D"

and shall be delivered personally or forwarded by registered post to the Secretary to the Government of Madras in charge of Labour (in triplicate),

the Commissioner of Labour, Madras, and the Conciliation Officer concerned.

The agreement shall be accompanied by the consent, in writing, of arbitrator or arbitrators.

Rules 27 and 27-A run thus:

Attestation of the arbitration agreement.--The arbitration agreement shall be signed-

(a) in the case of an employer, by the employer himself, or by his authorised agent or when the employer is an incorporated company or other

body corporate, by the agent, manager or other principal officer of the Corporation; and

(b) in the case of workmen, either by the President or Secretary of a trade union of workmen or by two office-bearers of the union authorised by

the. President or Secretary, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the

purpose and attended by a majority of the workmen concerned:

Provided that where the number of workmen affected is not more than 5, the agreement may be signed by all the workmen concerned.

(c) in the case of an industrial dispute raised in pursuance of Section 2A, by the workman concerned.

27A. Notification regarding agreement by majority of each party. Where an industrial dispute has been referred to arbitration and the State

Government is satisfied that the persons making the reference represent the majority of each party, it shall publish a notification in this behalf in the

Official Gazette for the information of the employers and workmen who are not parties to the arbitration agreement, but are concerned in the

dispute.

9. On a reading of Section 10A of the Act, it appears to us that there are two stages contemplated under the said section, one is the stage of

agreement and the other is the stage of award. The Mysore High Court in very categorical terms in *Workmen of Madras Woodlands Hotel v. K.*

Srinivasa Rao (1972) 42 F.J.R. 223, has laid down that the failure to follow the procedure u/s 10A(3), viz., the non-publication thereof would

render the award invalid. Likewise, is the decision in *Rasbehary Mohanty Vs. Presiding Officer, Labour Court and Another*, . The same position is

derived by a reading of the decision in *Singh (K.P.) and Another Vs. Gokhale (S.K.) and Another*, . However, the Full Bench of this Court in

R.K. Steels v. Their Workmen 1977 I L.L.J. 382, states thus:

...The argument that in the instant case the arbitration agreement was not forwarded to the Government or the other officers referred to in Sub-

section (3) of Section 10A and that the agreement or the award also was not published in the Gazette, showed that the parties deliberately did not

want to avail of the provisions of Section 10A could not be accepted as that will amount to putting the cart before the horse. The Government

comes into the picture only after the arbitration agreement had been entered into u/s 10A(1) and signed by the parties as required u/s 10A(2). If

once that is done, there is a valid arbitration agreement, and non-compliance with the other provisions of Section 10A or any other provision in the

Act relating to publication of the award will not invalidate or take the arbitration agreement itself outside the purview of Section 10A....

We may at once state that the question that arose before the Full Bench was whether an arbitration award rendered u/s 10A of the Act would be

amenable to writ jurisdiction. Nevertheless, the effect of non-compliance of Section 10A(3) came to be considered as seen from the above extract

and the Full Bench seems to suggest that the non-compliance of Section 10A(3) could not render the arbitration agreement (emphasis supplied)

invalid. Bound, as we are by the Full Bench, we will have to limit the scope of the judgment only to the stage of agreement and cannot extend it

beyond its frontiers, in other words, to the domain of award. If Section 10A(3A) is not complied with, we fail to understand how an award could

ever be characterized as valid. There is an important legal consequence if Section 10A(3A) is not complied with, that being the failure of the

Government to issue a notification u/s 10A(4A) of the Act. In other words, if there is a strike or lock-out, no notification u/s 10A(4A) can be

issued prohibiting the continuance of that strike or lock-out. In such a case, if it is held that Section 10A(3A) is not a mandatory requirement, will it

not jeopardise the industrial peace and harmony and will not the Government lose its jurisdiction to issue a notification u/s 10A(4A). For all these

reasons, we restrict the scope of our judgment to the stage of agreement as regards the non-compliance with Section 10A(3). As a matter of fact,

the judgments of the other High Courts, viz., Mysore, Orissa and Madhya Pradesh, are directly in point. We, therefore, hold that having regard to

the admitted fact of non-compliance with Section 10A(3A) the award is declared to be invalid. It is also admitted that there has not been any

publication u/s 17A of the Act. That being so, the award cannot be enforced. In view of this, we allow the writ petition. However, we may observe

that it will be open to the parties to take such steps as are available to them under law to make the award valid and enforceable. No costs.