

(1958) 12 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No's. 2358, 2359, 2360, 2361 and 2362 of 1958

Maharana Mill Kamdar Union

APPELLANT

Vs

N.L. Vyas

RESPONDENT

Date of Decision : 10-12-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 15, 17, 17A, 18

Citation : AIR 1960 Bom 29 : (1959) 61 BOMLR 678

Hon'ble Judges : J.M. Shelat, J;H.K. Chainani, J

Bench : Division Bench

Judgement

Per Chainani, C.J.—The petitioners in these five applications were employees of the Maharana Mills, Ltd., at Porbandar, respondent 2, to whom I will hereinafter refer to as "the respondent." In 1954-55 there were disputes between the respondent and its workmen represented by the Maharana Mill Majoor Mahajan Sangh. Three references were then made by the Saurashtra Government under S. 40 of the Industrial Disputes Act to the industrial tribunal. These were Reference Nos. 47 of 1954, 91 of 1955 and 102 of 1955. During the pendency of these references before the industrial tribunal the parties arrived at a settlement, by which they agreed to refer the disputes between them to private arbitration. On 8 June, 1956, an application signed on behalf of both the parties, that is so say, the respondent and the workmen represented by the Maharana Mill Majoor Mahajan Sangh, was made to the industrial tribunal in each of the three cases pending before it. In this application it was stated that the parties to the disputes had agreed "to settle all matters by private negotiations and/or arbitration as per agreement" attached to the application and they requested the tribunal "to grant permission to withdraw all the cases without the same being dismissed." The agreement annexed to the application was in the following terms :

"The Maharana Mills (Private), Ltd., Porbandar, and the Maharana Mill Majoor Mahajan Sangh, Porbandar, do hereby agree and settle that the matter in

Adjudication No. 102 of 1955 be withdrawn from the hon''ble industrial tribunal, without the same being dismissed and settled the same as follows :

TERMS OF SETTLEMENT 1. That the following arbitration board will finally decide the matter in Adjudication No. 102 of 1955. Arbitration Board Mills representatives - 1. Sri Ambalal Maganlal Joshi and/or 2. Sri Prafulchandra P. Gundavada. Union representatives - 1. Sri V. K. Trivedi, and/or 2. Sri Kantilal B. Shah. 2. In the case of difference between the arbitrators, the arbitrators shall jointly appoint an umpire, failing agreed decision hon''ble the industrial tribunal Sri D. L. Master will act umpire. 3. The decision of the arbitration board will be given within two months hereafter. 4. The decision of the arbitrators and/or the umpire will be binding on the parties. 5. This settlement will be confirmed before conciliation officer within fifteen days hereafter."

2. On the application in reference No. 47 the industrial tribunal made the following order :

"The terms of agreement have been filed by the parties. I, therefore, give my award as per terms of settlement appended herewith."

3. Orders in practically the same terms were made in the other two references. The orders, which are styled as awards, were made in two reference on 9 June and in the third on 11 June, 1956. They were published as awards, in the Saurashtra Government Gazette on 13 June 1956.

4. The petitioners in these five applications were dismissed between 14 June 1956 and 15 June 1956, on different charges of abusing and assaulting the officers of the mills, of damaging property belonging to the mills and for refusing to perform their normal duties by adopting go-slow tactis. Thereafter complaints were made to the industrial tribunal under S. 33A of the Act by the petitioners, in which they contended that as they had been dismissed within one months from the date of the publication of the awards, i.e., 13 June, 1956, there had been a contravention of the provisions of S. 33 of the Act. They, therefore, prayed for orders directing their reinstatement and the payment to them of wages from the dates of their dismissal.

5. The respondent resisted the applications made by the petitioners on various grounds. It was contended that as the industrial tribunal had allowed the parties to withdraw the references pending before it, it could not make any awards. Even though the orders made by it were termed as awards, they were not awards within the meaning of the Act. As they were not awards, they were not required to be published and the question of their enforceability did not arise. It was, therefore, urged that S. 22(3) did not apply and that the proceedings before the tribunal had terminated on the dates on which the tribunal had made orders allowing the disputes to be withdrawn. The references made by Government to the tribunal were in respect of disputes between the respondent and its workmen represented by the Maharana Mill Majoor Mahajan Sangh. The petitioners are not members of this sangh. They belong to a rival union. It also appears that after

the reference had been made to the industrial tribunal, the tribunal had not issued general notices to all the persons employed in the mills. It was, therefore, contended on behalf of the respondent that the petitioners were not parties to or concerned in the disputes referred to the tribunal or bound by the award made by the tribunal. Both these contentions were accepted by the industrial tribunal, which accordingly dismissed the applications made by the petitioners. The orders made by the tribunal dismissing the applications of the petitioners have been challenged in these five special applications.

6. In order to appreciate the arguments, which have been advanced, it is necessary to consider the provisions of the Industrial Disputes Act, under which the references had been made to the industrial tribunal as they stood at that time. Section 2(b) of the Act defines the word "award" as meaning an interim or final determination by an industrial tribunal of any industrial dispute or of any question relating thereto. Section 10 provides for a reference of an industrial disputes being made by the appropriate Government to a tribunal. Section 15 provides that where an industrial disputes has been referred to a tribunal for adjudication, it shall hold the proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government. Section 17 provides for publication of the awards in the official gazette. Section 17A states that the award of the tribunal shall become enforceable on the expiry of thirty days from the date of its publication under S. 17. Section 18 provides that an award, which had become enforceable, shall be binding on all parties to the industrial disputes and on all persons employed in the establishment, to which the dispute relates, on the date of the dispute and all persons who subsequently become employed in that establishment. Sub-section (3) of S. 20 states that proceedings before a tribunal shall be deemed to have concluded on the date on which the award becomes enforceable under S. 17A, i.e., on the expiry of one months from the date of publication of the award in the official gazette. Section 33 stated that during the pendency of the proceeding before a tribunal in respect of an industrial dispute, no employer shall dismiss any workman concerned in such dispute save with the express permission in writing of the tribunal. Section 33A under which the proceedings in the present cases were instituted, states that where an employer contravenes the provisions of S. 33 during the pendency of proceeding before a tribunal, any employee aggrieved by such contravention may make a complaint in writing to such tribunal and on receipt of such complaint the tribunal shall adjudicate upon the complaint as if it was a dispute referred to or pending before it in accordance with the provisions of this Act.

7. The orders made by the industrial tribunal on the three references, which it has described as awards, were published on 13 June, 1956. The petitioners were dismissed within a week thereafter. The petitioner's case is that the proceedings before the tribunal must, under Sub-section (3) of S. 20, be deemed to have been pending till 13 July, 1956, and that as they were dismissed before then, the provisions of S. 33 have been contravened. The respondent's contention, on the

other hand, is that the orders made by the tribunal on the three references were not awards within the meaning of the Act, that the proceedings before the tribunal were concluded when the tribunal passed orders on 9 June, 1956, and 11 June, 1956, allowing the disputes to be withdrawn and that consequently no proceedings were pending before the tribunal when the petitioners were dismissed on and after 14 June. The material question for decision, therefore, is whether the orders passed by the tribunal were awards within the meaning of the Act. According to the definition given in S. 2(b), an awards must be :

- (1) a determination,
- (2) the determination must be by an industrial tribunal, and
- (3) the determination must be of an industrial dispute or any question relating thereto.

8. Where a tribunal allows a matter to be withdrawn in order that it may be referred to a private arbitrator for adjudication, there remains no dispute before it, on which it can adjudicate. There is also no determination of the dispute itself; the disputes continues, but instead of being decided by the industrial tribunal, it is to be decided by private arbitration. There is, therefore, no determination of the dispute in such cases, much less is it a determination by an industrial tribunal.

9. Mr. Singhvi has contended that the three reference could not be withdrawn, as these reference had been made to the tribunal by the State Government and as under S. 15 the tribunal was bound to proceed with the references until it had made the awards. He has relied on the decision of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, in which it was held that Government has no power to cancel or supersede a reference made by it under S. 10 of the Act. That case does not, however, decide that the parties, between whom the dispute is to be adjudicated upon by the industrial tribunal, cannot withdraw the disputes from adjudication by the tribunal. It is, however, not necessary to decide this points in these applications, because the question before us is not whether the withdrawals were legal, but whether the orders permitting the withdrawals amount to awards.

10. The orders passed by the tribunal on the applications for withdrawal made to it were that it was giving awards as per terms of the settlements. The terms of the settlements show that the disputes between the parties had not been resolved; all that had been agreed was that these disputes should be referred for decision to certain specified arbitrators. There was no decision by the tribunal on the matters in dispute. Consequently, there was no determination of the disputes within the meaning of the Act. Even though, therefore, the orders made by the tribunal are described as awards and were published as such in the official gazette, they were not awards within the meaning of the Act. The position might have been different, if the disputes had been settled on merits by private agreements and the tribunal had been asked to make awards in terms of the

agreements, but that is not the case here.

11. Mr. Singhvi had relied on the decision of a single Judge of the Kerala High Court in *Krishnankutty Nair v. Industrial Tribunal* 1957 II L.L.J. 45. In that case, during the pendency of a reference before an industrial tribunal, the parties agreed to refer the matters in dispute to arbitration of certain persons. An application was then made to the tribunal for permission to withdraw the dispute. The tribunal after holding an inquiry came to the conclusion that the terms of the settlement were fair and beneficial to the workers. The tribunal then made an award accepting the terms of settlement and holding that there was no subsisting dispute to be decided by the tribunal. The question then arose whether parties by agreement between them could withdraw a reference made to an industrial tribunal. It was held that they could do so, and that the industrial tribunal was competent to allow the withdrawal of the dispute. The judgment shows that the learned Judge was inclined to regard the order made by the tribunal as an award. He has observed that the expression "determination" in the definition of "award" indicates only coming to an end, which may be in any way whatever. With respect, it seems to us however that the definition clearly contemplates determination of the disputes by an industrial tribunal. Where a dispute is withdrawn from the purview of an industrial tribunal, the proceedings before the tribunal come to an end by the tribunal allowing the dispute to be withdrawn, but there is no determination of the dispute by it. A distinction must be drawn between the determination of an industrial dispute and the determination or termination of proceedings before a tribunal. In the present cases, the effect of the orders passed by the tribunal was that the proceedings before it came to an end, but the disputes still continued and there was no determination thereof by the tribunal. Consequently, the orders made by the tribunal are not awards within the meaning of the Act.

12. Section 15 of the Act provides that where an industrial disputes has been referred to a tribunal, it shall, on the conclusion of pro-proceedings before it, submit its award. Mr. Singhvi has, therefore, contended that in case we hold, as we are inclined to do, that the orders made by the tribunal cannot amount to awards, the proceedings must be held to be still pending before the industrial tribunal. This argument cannot be accepted, because rightly or wrongly the tribunal allowed the parties to withdraw the matters in disputes from adjudication by it. After the tribunal passed orders sanctioning the withdrawals, the proceedings before the tribunal came to an end. The orders allowing the matters in dispute to be withdrawn were passed on 9 and 11 June. The petitioners were dismissed thereafter. Consequently, no proceedings were pending before the tribunal, when the petitioners were dismissed. The provisions of S. 33 cannot therefore be said to have been contravened.

13. The view taken by the industrial tribunal is, therefore, correct. The rules issued on the five applications will, therefore, be discharged. There will be no order as to costs.