

(1960) 02 KL CK 0054
In the High Court Of Kerala

Mammoo

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 22-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 228
Industrial Disputes Act, 1947 — Section 10, 11, 33B, 36, 38

Citation : (1960) 1 LLJ 780

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Judgement

S. Velu Pillai, J.—The petitioner is the secretary of an association of employers called "Manji Owners" Association." Originally there was a reference by Government under the Industrial Disputes Act, 1947, referred to hereafter as the Act, to the labour court at Kozhikode. That Court having been abolished, the proceedings were transferred to the labour court, Quilon. On 17 June 1958, Government issued a notification Ex. A. by which in the exercise of the powers under Sections 33B(1) and 10(1)(d) of the Act, the proceedings were withdrawn from the labour court, Quilon, and were transferred and "referred" to the industrial tribunal, Kozhikode. The petitioner thereupon objected to the jurisdiction of the industrial tribunal, Kozhikode, to entertain the reference and to proceed with it, but the tribunal held against him by order Ex. B, This petition has been filed under Article 226 of the Constitution to quash the notification Ex. A. and the order Ex. B.

2. A preliminary objection was raised on behalf of the respondents by the learned Government Pleader to the maintainability of this petition on the ground that that petitioner, as the secretary of the association, is not personally aggrieved by the impugned notification or order, and is not therefore, entitled to carry on this proceeding under Article 226, although he had a locus standi in the labour courts and the industrial tribunal by virtue of the provisions of Section 36(2) of the Act. In support of this objection, he relied on the decision of a Full Bench of the Allahabad High Court, in Indian Sugar Mills Association Vs. Secy. to Government,

Uttar Pradesh Labour Department and Others, but it was also held in the same case, that if the association is a registered one, or has a right to represent the concerned mills by virtue of its rules and regulations, then it had a right to maintain the proceedings under Article 228, The preliminary objection before me had not been taken by way of a counter-affidavit and therefore the petitioner had no opportunity to plead, whether or not under the rules and regulations of the association, the petitioner has a right to carry on a civil proceeding on behalf of the employers whom the association represents and who undoubtedly are aggrieved parties and have a locus stand. It was also suggested by the learned Counsel for the petitioner that the association had been registered under the Trade Unions Act. The preliminary objection is dependent on matters which require pleading and investigation and has therefore to be overruled.

3. It has been observed that Government have also made a fresh reference u/s 10(1)(d) of the Act and if this can be maintained, there is no need to consider the objection as to the legality of the transfer made to the industrial tribunal, Kozhikode, in the exercise of the power conferred u/s 33B(1) of the Act. The learned Counsel for the petitioner was prepared to grant that before the amendment of the Kerala Industrial Disputes Rules by notification dated 30 April 1958, by which Rules 10A and 10B were introduced, an industrial tribunal derived its jurisdiction from the reference made to it by Government u/s 10 of the Act; but the contention was that Rule 10B having introduced a procedural requirement, that upon a reference, Government shall send a copy of the order of reference to the labour court or tribunal and to the opposite party concerned in the labour dispute, and also a copy of the statement of demands submitted by the party representing the workmen and already transmitted to Government, the labour court or tribunal could obtain jurisdiction only on compliance with it by Government. I cannot accede to this contention. Section 7A of the Act prescribes the constitution of an industrial tribunal, and Section 10(1)(d) provides that "where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing" refer the dispute or matter to the tribunal for adjudication. Section 11 is a provision in Chap. IV of the Act dealing with "procedure, powers and duties of authorities" and Sub-section (1) provides that

subject to any Rules that may be made in this behalf...tribunal...shall follow such procedure as...(it) may think fit.

Rules 10B has been framed by virtue of the rule-making power u/s 38(1) which says that

the appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

The marginal note to Rule 10B reads: "proceedings, before the labour court or tribunal." There is no good reason to think that the procedure now prescribed by

Rule Rule 10B is jurisdictional in nature, and pertains to the conferment of power to adjudicate on the matter committed to it, and of which it takes cognizance by reason of the order of reference, apart from anything else, I have therefore no hesitation in overruling this contention of the Petitioner, that the prescription in Rule 10B is a necessary preliminary to the conferment of jurisdiction on the industrial tribunal. The reference made to the industrial tribunal, Kozhikode, u/s 10(1)(d) of the Act, is perfectly valid and cannot be impugned. The petition therefore fails and is dismissed with costs, including advocate's fee Rs. 150.