

(1992) 01 MAD CK 0069
In the Madras High Court
Case No : W.A. No. 61 of 1992

Moorco (India) Ltd.

APPELLANT

Vs

Govt. of Tamil Nadu and Others

RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A(3), 17

Citation : (1994) 68 FLR 157 : (1994) 2 LLJ 111 : (1993) 1 MLJ 51

Hon'ble Judges : Nainar Sundaram, Acting C.J.; Thanikkachalam, J

Bench : Division Bench

Advocate : Sanjay Mohan, for S. Ramasubramaniam and Associates, for the Appellant; M.A. Sadanand, Govt. Pleader for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Nainar Sundaram, Actg, C.J.—The petitioner in W.P. No. 5497 of 1990 is the appellant in this writ appeal. The respondents in the writ petition are the respondents in this writ appeal. For the sake of convenience we are referring to the parties as per their nomenclature in the writ petition.

2. The petitioner came to this Court by way of the writ petition seeking for a writ of mandamus directing the second respondent to forward his award dated June 30, 1988 to the first respondent for the purpose of publication as contemplated by Section 17 of the Industrial Disputes Act, 1947, hereinafter referred to as the Act. Certain broad proceeding factual features must stand delineated for the purpose of appreciating the scope of the prayer projected in the writ petition. There was a settlement on January 27, 1988 u/s 12(3) of the act between the petitioner and its workmen. Term No. 3 of the settlement read as follows:-

"The Deputy Commissioner of Labour shall examine the eligibility for Bonus under the Payment of Bonus Act, 1965 for the workmen for the financial year 1986-87, and offer his decision at the earliest and the parties hereto agree to

abide by the same."

There is no controversy that the above term would constitute only an agreement to make voluntary reference of the dispute over Bonus to arbitration. Section 10A of the Act speaks about voluntary reference of disputes to arbitration. Sub-section (3) thereof reads as follows:-

"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."

The admitted position mandates of Sub-section (3) of Section 10A of the Act were not complied with. The second respondent rendered his decision on June 30, 1988 and the portion of his decision, which is relevant from the point of view of the petitioner, reads as follows:-

"I hold that Section 16 of the Payment of Bonus Act 1965 is applicable to the present case; and that the workers of the establishment (viz) Moorco (India) Ltd. are not entitled to bonus for the year 1986-87 under the above said Act I give my decision accordingly."

3. The question which arose before the learned Single Judge for his consideration was as to whether a writ of mandamus, as asked for, could issue. The well-settled proposition is that the Act, as such, does not countenance and make available its machinery for arbitration outside its purview. When there had been a non-compliance with Sub-Section (3) of Section 10A of the Act, it is not possible to characterise the decision rendered by the second respondent as one coming within the purview of the Act. In this context, it is relevant to take note of Sub-section (4) of Section 10A of the Act also, and it reads as follows:-

"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."

Sub-section (4) of Section 10A of the Act is interlinked with Sub-section (3) and only on satisfaction of the mandates of Sub-section (3) of Section 10-A, there could be an investigation into the dispute and making of the award by the arbitrator and then forwarding it to the appropriate Government, as per Sub-section (4) thereof. Otherwise, the whole process will remain only in the realm of private arbitration, falling outside the Act. Section 17 could have reference only to publication of awards coming within the purview of the Act. Viewed from this angle, the learned Single Judge was correct in discountenancing the prayer for issuance of a writ of mandamus, as asked for. This writ appeal directed against the order of the learned Single Judge deserves dismissal and accordingly we dismiss it. No costs.