
(1959) 11 KL CK 0033
In the High Court Of Kerala

Narayanan Namboodiripad

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-11-1959

Acts Referred:

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

Citation : (1960) 4 KLJ 102 : (1960) 1 LLJ 619

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Judgement

S. Velu Pillai, J.—This is a petition for a writ of certiorari to quash a reference, made by the respondent 1 the State of Kerala u/s 10(1)(c) of the Industrial Disputes Act, 1947, hereafter to be referred to as the Act, to the respondent 2, the labour court, at Kozhikode for a decision of the question

whether the dismissal of 23 workmen by the management of Anangamala estate was proper and justified and if not," to what reliefs the workmen are entitled,

and for a writ of prohibition to the labour court to forbear from proceeding further with the reference. The petitioner is the head and manager of the Kanjoor mana which owns an item of property about 236 acres in extent. Out of this, an area of 47 acres had been cleared and developed, and fruit-bearing trees of various kinds had been planted thereon, including 10 area under coffee plantation. A dispute seems to have arisen between the petitioner and the 23 workmen, who were represented by Anangamala Coffee Estate Thozhilali Union, and the reference was made, an if it constituted an industrial dispute within the meaning of the Act. The petitioner's contentions appear to be, that he is not carrying on an industry within the definition in Section 2(j) of the Act, and that there is no relationship of employer and employees between him and the workmen. A third point has also been, raised by the petitioner that the respondent 3, Walluvanad Taluk Rubber Estate Workers' Union, does not represent the 23 workmen and is not competent to apply for a reference or to

carry on the proceedings.

2. The learned Counsel, who appeared for the respondent 1, took a preliminary objection before me, that the order of reference is administrative in character, and no writ of certiorari can issue to quash it, and that before the labour court has adjudicated as to its jurisdiction to entertain the reference, this Court ought not to issue a writ of prohibition under Article 226. The position is well settled, that an order of reference u/s 10 of the Act is administrative in character and no certiorari can issue to quash it. This point is covered by a Bench decision of this Court In O.P. No. 371 of 1957 I L.L.J. 323 and I hold, that no certiorari can issue to quash the reference.

3. The same case is also authority for the position that "when the decision of the question whether an order of reference was made with jurisdiction, depends on investigation of disputed facts, it would not be proper for the Court to Interfere by a writ of prohibition." It is only necessary to consider, whether this is a case falling within the scope of the dictum referred to above; in other words, whether the jurisdictional issue depends on the investigation of disputed facts.

4. As stated already, the two important questions are whether the petitioner had been engaged in an industry, and whether the relationship between him and the labourers was that of employer and employees. The counter-affidavit filed on behalf of the respondent 1 maintains the stand that the petitioner was engaged in an Industry within the meaning of the Act, and that the relation ship referred to above was that of employer and employees. The learned Counsel for the petitioner contended that from the mere cultivation of 47 acres of land, an Inference cannot be raised that such cultivation amounts to an industry within the definition and that therefore the reference is ex facie not maintainable and this Court ought to interfere. At the present stage without the necessary facts before me, I am not prepared to treat this question as purely one of law. It is a question to be decided upon facts to be ascertained, whether the petitioner in raising the cultivation on 47 acres, was engaged In a "business", enterprise or in carrying on an "undertaking." It would be open to the petitioner to establish that he was cultivating only as a prudent owner of property would. I therefore think that this is a matter which depends on the investigation of facts to be ascertained. The relationship between the petitioner and the labourers also is a matter on which evidence would be necessary. I therefore come to the conclusion that this is a case in which the facts pertaining to the jurisdictional issue remain to be ascertained and which therefore comes within the scope of the preliminary objection to the issue of prohibition. As to the competency of the respondent 3 to carry on the proceedings, the counter-affidavit states that the Anangamala Coffee Estate Thozhilali Union is only a branch of the respondent 3. This is a disputed question of fact and has to be determined before the competency of the respondent 3 to carry on the proceedings can be decided.

5. I therefore come to the conclusion that at this stage no writ or prohibition can issue under Article 226. The proper remedy for the petitioner lies in his raising

the issue as to jurisdiction as a preliminary point before the labour court by which the matter is to be enquired into. It is expected, that when the point is taken, that Court will consider and decide it as a preliminary issue. With these observations, this petition is dismissed. I make no order as to costs.