

(1966) 11 MAD CK 0005
In the Madras High Court

Nellai Cotton Mills

APPELLANT

Vs

Assistant Commissioner of Labour and Others

RESPONDENT

Date of Decision : 30-11-1966

Acts Referred:

Constitution of India, 1950 — Article 136, 138, 223, 226, 228
Industrial Disputes Act, 1947 — Section 10A, 30A

Citation : (1967) 2 LLJ 240

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

Venkatadri, J.—The management of the Nellai Cotton Mills, Tirunelveli, has filed this petition under Article 228 of the Constitution, to quash

the decision of the arbitrator (the Assistant Commissioner of Labour II, Madras) in a dispute arising between the management and respondents 2

to 6 herein, some of the workman who were dismissed from service alter ft domestic en q air y conducted by the management.

2. The decision of the arbitrator, appointed by consent of parties, is to this effect. The findings of the domestic enquiry officer in regard to

respondents 4 to 6 were baseless and their dismissal was, therefore, set aside and they were directed to be reinstated with continuity of service

and back-wages. As regards respondent 3, the management had some justification for taking action against him, but his unemployment for about

eight months was an adequate punishment and he was, therefore, directed to be reinstated with continuity of service but without back-wages. As

regards respondent 2, the management were justified in dismissing him, but, however, he should be paid a lump-sum compensation equivalent to

his wages for nine months in full and final settlement of all his claims. The

decision was to be implemented not later than 1 January 1964. It is this decision that the management of the mills in question want to quash, on the ground that the decision is unjust and erroneous and that the arbitrator erred in acting as a Court of appeal and substituting his own judgment for that of the management.

3. A preliminary objection was taken by the learned Counsel appealing for the State the workmen that a writ petition cannot lie against the decision of an arbitrator appointed u/s 10A of the Industrial Disputes Act. There seemed to be divergent opinion as to which arbitrator appointed by consent of parties u/s 10A of the Act. WES fane-cloning as a quasi-judicial body and whether the decision of such an arbitrator would be subject to the judicial superintendence of a High Court under Article 226 of the Constitution. Bat tae matter seems to have been set at rest by the Supreme Court in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd.*, Bombay, where it has been observed:

... Article 223, under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writ can be issued only against the orders of courts or tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed u/s 10A is not; a tribunal under Article 138, in a proper case a writ may lie against his award under Article 226 ...

This decision has been followed by the Kerala High Court in *Koru v. Standard Tile and Clay works* 1934 I L.L.J. 102. Bat Srinivasan, J. appears to have held in *Anglo-American Direct Tea Trading Co. Ltd, v. its workmen* 1963 II L.L.J. 752 that a writ of certiorari could not lie to quash an award made by an arbitrator appointed u/s 30A of the Industrial Disputes Act. A reading of the judgment shows that the decision of the Supreme Court has not been brought to the attention of the learned Judge (Srinivasan, J.)- However, It is now settled that a writ petition against the decision of an arbitrator appointed u/s 10A of the Industrial Disputes Act is maintainable, and it follows that the preliminary objection will have to be

overruled.

4. I have now to consider whether there is any error apparent on the face of the record which requires correction in this proceeding. It is common

case that respondents 2 to 6 were engaged in unlawful activities inside the premises of the mills which resulted in criminal proceedings against the

workmen. A domestic enquiry was conducted by the management, as a result of which respondents 2 to 6 were dismissed from service. When the

union took up the cause of these workmen, the management apprehended that there would be an industrial dispute and, therefore, arrived at a

settlement with these workmen before the labour officer, Tirunelveli. to refer the matter to arbitration. Thereupon, the arbitrator went into the

matter, heard the parties and gave the decision already referred to. Except attacking the decision in vague and general terms, there is no specific

attack by the management of the decision of the arbitrator, pointing out any error in his decision which would require correction by this Court

under Article 226 of the Constitution. The arbitrator was asked to settle the dispute over the dismissal of respondents 2 to 6 by the management.

Therefore, the question that was to be decided by the arbitrator was whether the dismissal by the management of these workmen was justified on

the evidence on record. It is not the case of the management that the arbitrator did not consider the attendant circumstances relating to the incident

which led to the dismissal of the five workmen by the management in their domestic enquiry. According to the management, these workmen

committed offences and were, therefore, liable to be dismissed from service. But before the labour officer, the management agreed with the

workmen to refer the matter to an arbitrator. Before the arbitrator the issue related to the dismissal of these workmen on the materials placed

before the domestic enquiry. The arbitrator considered in detail the representation of the management and the workmen in regard to the incident on

30 March 1963, namely, the seizure of the papers containing the undertaking from the workers to keep their cycles at their own risk at the cycle-

shed within the mill premises, and also the finding of acquittal in the connected criminal proceedings, and finally gave his decision. The decision has

been given with a view to maintain good and cordial relationship between the management and their workmen. The decision has been given by an

arbitrator appointed by consent of parties. The management and the workmen have agreed to accept the decision arrived at by the arbitrator.

Under the circumstances, I do not find any error which justifies interference by this Court.

5. In the result the writ petition is dismissed. There will be no order as to costs.