

(1958) 12 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 1211 of 1956

Papanasam Labour Union

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 05-12-1958

Acts Referred:

Evidence Act, 1872 — Section 115

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 22(4)

Citation : AIR 1959 Mad 360 : (1959) ILR (Mad) 788 : (1959) 1 LLJ 526 : (1959) 72 LW 261

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : A. Ramachandran, for Row and Reddy and S. Viswanathan, for the Appellant; Addl. Govt. Pleader and M.R. Narayanaswami, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Ayyar, J.—This is a petition by the Papanasam Labour Union for the issue of a writ of mandamus directing the State of Madras to refer all the matters referred to in a strike notice issued by the petitioner to the Madura Mills Co., Ltd., for adjudication under the Industrial Disputes Act.

2. Most of the workers in the Madura Mills Co., Ltd., belong to one or other of eight unions. The petitioner is one of such unions. The Madura Mills Co., Ltd., is engaged in the production of cotton textiles, and, the cotton textile industry has been declared to be a public utility service for the purposes of the Industrial Disputes Act, 1947. On 3rd May 1956 the petitioner served notice on the Madura Mills Co. Ltd., that the workers would go on strike unless the following seven demands were conceded:

1. Bonus of six months basic wages for the year 1955.

2. Minimum basic wage of unskilled workers to be increased to Rs. 30 per mensem.

3. Dearness allowance to be raised from three

annas to four annas per point of increase in the cost of living index over 100.

4. To drop the increased workload proposed by the second respondent.

5. Introducing of annual increments and gradation in all departments.

6. Claim for 11 festival holidays with wages annually.

7. All workers who have put in more than one year of service to be made permanent. The Madura Mills Co. Ltd., refused to concede any of these demands.

3. The Commissioner for Labour then took up conciliation proceedings, but, he was unable to bring about any settlement and, he reported to that effect to the State of Madras on 15th May 1956.

4. By an order dated 30th May 1959, the State of Madras referred only two out of the seven matters comprised in the dispute and the strike notice for adjudication. The State of Madras gave various reasons for declining to refer the remaining five items for adjudication.

5. The case of the petitioner is that the State of Madras "had no jurisdiction" to omit any of the matters comprised in the notice of strike from the order of reference for adjudication. The reasons given by the State for not doing so cannot be accepted in law.

6. In the counter which the Government filed, the point, the significance of which will be presently examined, was taken that there had been no valid notice of strike u/s 22 of the Industrial Disputes Act.

"The notice that was issued u/s 22 was not in conformity with the provisions of the Act and the rules and five of the items contained in the notice, assuming the notice to be valid, were frivolously included by the Unions. The Government on a perusal of the Conciliation Officer's report did not consider it necessary to refer, all the seven items for adjudication."

The contention of the Government is that they are under no legal obligation to refer all the items in controversy for adjudication; they have discretion to decide what items they would refer and what items they would not.

7. The provisions of the Industrial Disputes Act that bear upon the present controversy, are to be found in Sections 10, 12 and 22. I quote the portions that are just now material, and, as they stood on the relevant date, i-e., 30th May 1956, when Government made the reference complained of.

"Section 10: Reference of disputes to Boards, Courts or Tribunals: (1) Where, the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in

writing:

(a)

(b).....

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to a Tribunal for adjudication.

.....

Provided that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced."

"Section 12(1): Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall hold conciliation proceedings in the prescribed manner

4. If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and "circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons-on account of which, in his opinion, a settlement could not be arrived at.

5. If, on a consideration of the report referred to in Sub-section (4) the appropriate Government is satisfied that there is a case for reference to a Board, or Tribunal it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

8. Section 22(1) directs that no person employed in a public utility service shall go on strike in breach of a contract without giving notice of strike, or within fourteen days of giving such notice, or before the expiry of the date of strike specified in any such notice, or during the pendency of any conciliation proceedings and seven days after the conclusion of those proceedings. Section 22(4) provides:

"The notice of strike referred to in Sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed."

It will be" noticed at once that the proviso to Section 10(1) and Section 12(5) are in conflict. The proviso makes it obligatory on Government to make a reference for adjudication provided two conditions are fulfilled. One is that the dispute must relate to a public utility service, and, the other is that a notice of strike or lockout should have been given in the prescribed manner. When both

these conditions are fulfilled, a duty is laid on the Government to make a reference for adjudication except in two situations. These are (1) that the appropriate Government considers the notice of strike or lockout, as the case may be, to be frivolous or vexatious, and (2) that it is inexpedient to make a reference.

On the question in what circumstance it could be permissible for the Government to hold that it is inexpedient to make a reference, the statute gives no guidance; but I take it that the expediency must be based on the general public interest and not the advantage of individuals, groups or parties. Section 12(5), however, says something materially different. That sub-section does not make it obligatory on the Government to make any reference at all. Even the discretion to refer for adjudication appears to be qualified by the requirement that. Government should be satisfied that there is a case for reference to a Board or Tribunal. Where Government decide not to make a reference, all that they are required to do by Section 12(5) is to make a record of their reasons and communicate them to the parties concerned.

9. No amount of ingenuity can bring the proviso to Sections 10(1) and 12(5) into apposition. It is one of those instances where the complaint may be properly made that the legislature does not seem to know its own mind.

10. This conflict between Section 12(5) and the ; proviso to Section 10(1), however, makes it easier to construe the word "may" which occurs in Section 10(1). Ordinarily when power is conferred on any authority and a duty is attached thereto and the word "may" is used in that context, courts have taken the view that the word "may" is virtually equivalent to the word "shall".

It might have been permissible to construe the word "may" occurring in Section 10(1) as equivalent to "shall" but for the proviso. If, u/s 12(5) Government have a large measure of discretion in deciding whether they would make a reference for adjudication or not, if under the proviso to Section 10(1) too they have a measure of discretion, though a very much narrower one, it follows that the word "may" in Section 10(1) cannot be construed as equivalent to "shall".

11. The same view has been taken in the case" reported in The State of Madras Vs. The Swadesamitran Printers Labour Union and Others, . Vide the discussion on pages 621 and 622 (of Mad. LJ): (at pp. 298-299 of AIR).

12. It is common ground that the industry in question has been notified as a public utility service. It was also admitted before me that the requirements of Section 22(4) had not been complied with. The proviso to Section 10(1) will not, therefore apply to the present case since before that proviso can take effect it is necessary that a notice in conformity with the requirements of Section 22 should have been given.

Mr. Ramachandran the learned advocate for the petitioner, however, argued that in the present case Government have treated the case notice of strike as lawful

and they cannot now be heard to say that the notice of strike is not lawful. He said that on prior occasions too Government have taken action on notices of strikes which did not conform to the requirements of Sec. 22.

13. To dispose of this argument it may perhaps be sufficient to say that if the notice of strike is not legal because it does not conform to the requirements of Section 22, Government have no power to make it legal; the Act nowhere gives them the requisite power. Even if in the past Government have taken action on notices of strike which did not conform to the requirements of the Act, that will not have the effect of validating the present notice.

The argument of Mr. Ramachandran really amounts to this, that there is an estoppel against Government. But then, it is familiar knowledge that there can be no estoppel against a statute and, even if an estoppel can be raised against Government, I do not see how it can be raised against the Madura Mills Co. Ltd.

14. If the proviso to Section 10(1) is out of the way, then the matter will have to be disposed of u/s 12(5) or u/s 10(1). It will be noticed that u/s 12 the appropriate officer is entitled to initiate conciliation proceedings where any industrial dispute exists or is apprehended. A positive duty to initiate conciliation proceedings is imposed upon him where the dispute relates to a public utility service and a notice u/s 22 is given.

But, in other cases, though he is under no duty to act, he is given power to act if he thinks fit. u/s 12(4) the Conciliation Officer is bound to report the result of his efforts to Government whether the dispute relates to a public utility service or not, and, whether a notice of strike has been given or not. Section 12(5) gives a considerable measure of discretion to Government to refer the dispute for adjudication or not. The only limitation imposed there is that if they refuse to make a reference they must inform the parties concerned why they refuse to do so.

If, therefore, the present matter can be treated as falling u/s 12(5), the Government would appear to have complied with the requirements of that subsection because they informed the parties why they declined to refer the other questions for adjudication.

15. But some difficulty is raised by the fact that Section 30(1) also applies to the case. Mr. Ramachandran advanced an argument based on the language of Section 10(1) and, it is now necessary to refer to it. In the present case, since there was no proper notice u/s 22 Government could have taken the stand that they were not bound to make a reference, and, if they had taken that stand, it may be that they could not have been compelled to make the reference.

But then, they decided to make a reference and when they did that, it was not open to them to refer only some items for adjudication and refuse to refer the rest. They were bound to refer the entire dispute or not at all. It was pointed out that the words in Section 10(1) are "refer the dispute" and not any of the points

in dispute. It was also pointed out that in 1952 Clause (c) of Sub-section (1) of Section 10 was amended by adding the words "any matter appearing to be connected with, or relevant to, the dispute."

This argument suggests that so far as matters outside the dispute proper are concerned, Government have been given the power to pick out any particular matter. It was argued that when Government was given freedom of selection in respect of matters appearing to be connected with the dispute or appearing to be relevant to the dispute, and, no such freedom was given in respect of the dispute itself, they were bound to refer the entire dispute.

16. This reasoning makes it necessary to consider what the word "dispute" means. In Section 2(k) "industrial dispute" is defined as follows:

" "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

The petitioner in the present case made seven demands, on the Madura Mills Co. Ltd. The first was a claim for bonus, the second was for a minimum basic wage for unskilled workers, the third related to dearness allowance, the fourth related to workload, the fifth related to annual increments and time-scales of pay, the sixth related to festival holidays, and. the seventh was the claim that persons who had put in one year of service should be made permanent. Every one of these seven items is a separate industrial dispute.

In respect of any one of these, the Union could have given a notice of strike on which conciliation proceedings were bound to follow, and, at the end of which, either proviso to Section 10(1) or 12(5) would have come into operation. It is not possible to say that" all these items are so integrated as to constitute one single industrial dispute. There is point in the contention of Mr. Narayanaswami, the learned advocate for the Madura Mills Co. Ltd, that because all the demands are put down on one sheet of paper, all the disputes do not become one.

17. This point was considered by a Bench of the Patna High Court in Members of the Sasamusa Workers Union Vs. State of Bihar and Others, . I quote the relevant passages;

"It was contended by the learned counsel on behalf of the petitioner that the dispute itself comprised the entire list of 44 demands and it was beyond the jurisdiction of the State Government to refer only a part of the dispute, meaning thereby the items specified in Annexure A, of the notification. In my opinion the argument of the learned counsel is untenable and cannot prevail.

.....

According to this definition, each demand when made by the Workers" Union and refused by the management gives rise to an "industrial dispute". I conceive

therefore that 44 demands in the strike notice would give rise not to a single trade dispute but to an aggregate of 44 such disputes, For the reasons that I shall presently state the Government is not legally bound to refer all such disputes u/s 10(1), even if a public utility service is involved and notice of strike u/s 22 has been given, It follows that the reference made by the State Government with reference to the four matters mentioned in Annexure A of the notification is intra vires and legal."

With this reasoning I am in respectful agreement.

18. From this it follows that whether Section 12(5) or 10(1)--whichever it is--is more properly applicable to the facts of this case, Government had a discretion to refer some items in dispute and decline to refer the others, since each of those disputes constituted a separate industrial dispute.

19. In the result, the petition is dismissed and the rule nisi discharged. There will be no order as to costs.