

(1963) 11 MAD CK 0080

In the Madras High Court

Case No : Writ Petns. No"s. 752 and 753 of 1963

P.P.M.S. Nagarathnam

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 04-11-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 15, 2

Citation : AIR 1964 Mad 192 : (1964) ILR (Mad) 919 : (1965) 1 LLJ 84

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : C.R. Krishna Rao and A. Kamala Devi, for the Appellant; S. Mohan and K.V. Sankaran, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The petitioner is the proprietor of a Cigar Company. This business has been in existence from prior to 1955. Originally, the premises was licensed under the Factories Act, but after, certain decisions relevant to businesses of this kind the premises was removed from the list of factories. Two persons claiming to have been employed as workers in the petitioner's business complained that their services had been improperly dispensed with. The Cigar Workers' Union took up their cause and moved the Labour Officer, Virudhunagar, in that regard. The petitioner contended that there was no relationship of master and servant, that the nature of the employment was such that such relationship could not be postulated, and denied the existence of any industrial dispute. The Labour Officer made a report to the Government and the Government, by G. O. Rt. No. 1048 dated 24th June 1963, made a reference to the Labour Court, Madurai, u/s 10(1) (c) of the Industrial Disputes Act. The two questions referred were:

1. Whether the non-employment of S. Duraipandi and C. Kuruyan is justified and to what relief each is entitled?
2. To compute the relief, if any, awarded in terms of money, if it can be so

computed?

The short complaint of the petitioner in these writ petitions is that having regard to the fact that the "workmen" were not regularly employed by the management but were supplied with tobacco for rolling into cigars for which they were paid on the number of cigars rolled and the further fact that it was within the discretion of the workmen to come for work or not, the two workmen do not come within the scope of the Industrial Disputes Act at all. These workmen are said to be independent contractors, and if that should be so, the Industrial Disputes Act excludes from its scope any disputes that may arise between parties whose legal relationship is of that character. It is stated accordingly that no industrial dispute within the meaning of the Act could arise, and consequently the State Government have no jurisdiction to refer the dispute.

It is further stated that the Commissioner of Labour in certain proceedings started by him called upon the petitioner to constitute a "Works Committee" u/s 3(1) of the Act. The petitioner protested bringing to the notice of the Labour Commissioner the nature of the relationship between himself and the workmen. It is stated that after this objection was raised by the petitioner, the proceedings calling upon the petitioner to form a Works Committee were dropped. This is instanced only to show that the Government accepted the position with regard to the nature of the relationship between the parties.

2. In these writ petitions the petitioner prays that the order of the State Government making the reference may be prohibited from being proceeded with, on the contentions that have been referred to.

3. Only the third respondent, the Secretary of the National Cigar Workers' Union, has filed a counter affidavit. The principal contentions traverse the allegations made by the petitioner with regard to the nature of the employment in the business. It is claimed that having regard to the measure of control exercised by the petitioner over the employees, the latter fall within the definition of "workers" under the Industrial Disputes Act. It is further contended that notwithstanding the dispute regarding the nature of the relationship, it is open to the Government to make a reference, leaving that question to be decided as a preliminary issue by the Labour Court. On this contention it is urged that no writ of prohibition can issue to the Labour Court to restrain it from proceeding with the enquiry which has been lawfully brought before it, and that, if at all, any decision of the Labour Court may be amenable to certiorari proceedings.

4. It may be mentioned that when the Labour Officer made an enquiry, both sides made their representations before the Labour officer. The report of the Labour Officer upon which the Government purported to act and, to make the reference u/s 10(1) only sets out the opposing contentions of the two parties regarding the nature of the relationship between the management and the workers. There is no finding by the Labour Officer that the relationship was of a particular character, nor did the Government in making the reference purport to

decide it. The question then is whether in these circumstances the determination of the true incidents of this relationship is not a matter which is open to the Labour Court and whether if an adjudication of this kind is available to the petitioner at the hands of that Tribunal, this Court should examine that question in writ proceedings.

5. Obviously, the determination of this question calls for an examination of facts, which on the material that has been placed before me does not seem to have been examined by the Government or any other lower authority. Mr. C. R. Krishna Rao, learned counsel for the petitioner, apprehends that on the questions referred as they stand, the Labour Court may refuse to exercise its jurisdiction and hold that since the preamble to the Government order states that an industrial dispute has arisen between the workmen and the employer, the Tribunal may feel that it is only called upon to answer the two specific questions referred to it. If, however, this Court should hold that it is open to the Labour Court to go into the question of the applicability of the Industrial Disputes Act, he would be satisfied, and that in such an event, he does not press that any writ should issue. What I have now to examine is whether the Labour Court has jurisdiction to decide whether the employees are workmen within the meaning of the Act and whether the applicability of the provisions of the Industrial Disputes Act is open to adjudication by the Labour Court, notwithstanding that a reference has been made.

6. In a decision of this Court in *In Re: Paramount Films of India Ltd., Madras Branch*, , it was held that an order u/s 10(1)(c) of the Industrial Disputes Act is only administrative in its scope and that a writ of certiorari or prohibition cannot lie. It was pointed out that the person seeking to avoid the reference on the ground that there is no dispute at all for adjudication has to take it up as a preliminary issue for decision by the Tribunal itself and that the Industrial Tribunal has to decide such jurisdictional issue in the first instance.

In another judgment of this Court in *Kaleswari Handloom Factory by Proprietor, P.M.S. Guruswami Nadar and Others Vs. The State of Madras and Others*, , a similar question arose. The conciliation proceedings failed and the Government referred certain disputes for adjudication u/s 10(i)(c) of the Act. The main contention of the employer was that the workmen were not workmen within the meaning of Section 2(s) of the Act and that (therefore what was referred to adjudication was not an industrial dispute within the meaning of Section 2(k). The learned Judge referred to the earlier decisions rendered by him in other writ petitions and proceeded to examine the question whether the Industrial Tribunal had or had no jurisdiction to try as preliminary issue, whether what, was referred was an industrial dispute. It was argued before the learned Judge that since the jurisdiction of the Tribunal depended upon the reference, it could not adjudicate on the validity of the reference itself. This contention was repelled and it was pointed out:

"The jurisdiction of this Court even in proceedings under Article 226 of the

Constitution to decide where it is necessary to do so whether a given dispute is an industrial dispute cannot be doubted. That does not necessarily imply that the Industrial Tribunal has no jurisdiction to try such issue, should it become necessary to do so in the proceedings before it. In my opinion, the Tribunal has that jurisdiction. If it comes to the right conclusion that it is an industrial dispute, it has jurisdiction to proceed further with the adjudication of that dispute. If, however, it comes to the conclusion that the dispute is not an industrial dispute, it can have no jurisdiction to proceed any further."

Reference was made to the observations of Lord Esher M.R. in *Reg v. Commr. for Special Purposes of the Income Tax*, (1888) 21 QBD 313, as supporting that proposition. Finally, the learned Judge held that the tribunal has jurisdiction to decide whether the dispute referred to it is an industrial dispute as defined by Section 2(k) and as incidental thereto to decide whether the opposing parties were workmen as defined u/s 2(s) of the Act and that a decision of that question by the Industrial Tribunal was not precluded by the reference ordered by the Government u/s 10(i)(c) of the Act. The view expressed above that the Labour Court has jurisdiction to determine preliminary issue has been approved in *Mariamman Handloom Factory and Others Vs. State of Madras and Others*, .

7. In *W. A. Nos. 15 and 16 of 1959*, (Mad) this question again came up for examination somewhat indirectly and the question examined in those writ appeals was whether where the decision of a matter was entrusted for the exclusive adjudication by a statutory authority, the power of the High Court acting under Article 226 could extend to deal with an erroneous decision on a preliminary or jurisdictional issue. The matter was extensively considered and the principles of administrative law which confer power upon the Tribunal, to decide whether on the facts it had jurisdiction, were referred to.

8. It is seen from these decisions that the Labour Court has jurisdiction to determine whether on the facts placed before it an industrial dispute within the meaning of the Act has really arisen. If that undoubted jurisdiction exists in the Labour Court, it should follow that the grounds upon which the petitioner seeks the writ of prohibition are grounds which can be validly examined and adjudicated upon by the Labour Court itself as the determination of a collateral issue which, confers jurisdiction upon it to deal with the main reference entrusted to it. In these circumstances, it is not proper for this Court to enter into an examination of the facts, which alone can lead to a correct answer to the question whether the employees are workmen within the meaning of the Act and whether an Industrial Dispute within the meaning of Section 2(k) exists. Since this matter, can and should be decided by the Labour Court: itself, no writ can issue.

9. The petitions are accordingly dismissed but there will be no order as to costs.