

(1953) 09 MAD CK 0034
In the Madras High Court
Case No : Writ Petition No. 652 of 1953

Radhakrishna Mills Ltd., Peelamedu, Coimbatore Dt.	APPELLANT
Vs	
The Special Industrial Tribunal, Madras and Others	RESPONDENT

Date of Decision : 18-09-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 41
Industrial Disputes Act, 1947 — Section 10(5), 18

Citation : AIR 1954 Mad 686 : (1954) 1 LLJ 295 : (1954) 1 MLJ 266

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for the Appellant; Govt. Pleader and Arunachalam, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—By G. O. Ms. No. 2310 dated 16-5-1953, the Government of Madras, in pursuance of the powers conferred upon them by Section 10(1)(c), Industrial Disputes Act (Central Act 14 of 1947) referred to a special Industrial Tribunal for adjudication the disputes between the workers of the 65 textile mills enumerated in the schedule to the said G. O. and the management of the said Mills with regard to compensation for involuntary unemployment caused to the workers and while the proceedings regarding the adjudication of the disputes were going on, the petitioner, which is, one of the mills mentioned in the schedule applied to the Industrial Tribunal to summon and implead the Government of Madras as a party to the proceedings. This application was resisted on behalf of the workers and therefore the Tribunal had to consider the application on the merits.

2. Two points were raised before the tribunal and they were (1) whether the Tribunal has jurisdiction to implead the Government as a party; and (2) if it has jurisdiction, whether the Government are a necessary or a proper party. On the

first question the finding was that the tribunal has the power to summon and add as a party any person whose presence the tribunal deems necessary for a proper adjudication of the dispute. On the second question the tribunal found that the Government of Madras were neither a necessary nor a proper party. The application was therefore dismissed.

3. On the first question a recent decision of this Court reported in -- P.G. Brookes Vs. The Industrial Tribunal, Madras and Others, , held that Section 18(b), Industrial Disputes Act necessarily implies that parties other than the original parties to an Industrial dispute can be summoned as parties to the proceeding. Therefore by necessary implication there is vested in the industrial tribunal a power to add any person or establishment whose presence is necessary or proper for the due and just adjudication of the dispute and make them parties to the proceeding. Clause (b) of Section 18, when it speaks of "all other parties summoned to appear in the proceedings" as parties to the dispute, necessarily implies that some persons other than the original parties to the dispute or persons whom the state Government has subsequently added u/s 10(5), can also be summoned in order that the award may become enforceable and binding on those parties also.

If the intention of the legislature had been to restrict the scope of the enquiry and the award only to the employers and the employees or similar persons added by the State Government u/s 10(5), then Section 18(b) would be a surplusage because when once the tribunal is given authority to summon other parties to appear in the proceedings. It means there is a wide discretion vested in the tribunal to have before it persons or institutions other than those originally intended by the government or who are added by the Government. In my view Section 18, Clause (b) gives sufficient authority to the tribunal for the addition of parties. It is similar to Order 1, Rule 10(2), Civil P.C., where the Court may, at any stage of the proceedings, either upon or without the application of either party, order that the name of any person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added as a party. The view taken by the learned Judges in -- P.G. Brookes Vs. The Industrial Tribunal, Madras and Others, " cited above is to the same effect and is binding on me.

4. Mr. Rajagopala Aiyangar appearing on behalf of the petitioner also laid stress on similar provisions contained in the Representation of the People Act of 1951 and the powers of a tribunal appointed to try election petitions to add parties to the election dispute. u/s 82 of that Act, a petitioner questioning the election of a person returned shall join as respondents to his petition all candidates who were duly nominated at the election other than himself, if he was so nominated. Section 90, Sub-section (2) lays down that every election petition shall be tried by the Tribunal, subject to the provisions of the Act and any rules made thereunder, as nearly as may be, in accordance with the procedure applicable

under the Civil P. C. to the trial of suits. Section 92 lays down the powers of the tribunal. A question arose whether the election tribunal had power to add as parties to the petition any person who had not been impleaded in the first instance u/s 82, before the Bombay High Court in a case reported in -- Sitaram Hirachand Birla Vs. Yograjsing Shankarsing Parihar and Others, . The learned Judges came to the conclusion that the Election Tribunal has the power to add as parties to the election petition those who had not been originally impleaded. This decision has been followed by our High Court in -- "W. A. No. 49 Of 1953 and W. A. No. 37 of 1953 (C)".

5. But the learned Advocate-General contends that on a proper construction of the sections of the Industrial Disputes Act, the tribunal has no jurisdiction to implead as party any person who has not been mentioned in the reference by the Government, or whom the Government subsequently add as a party u/s 10(5). He refers to the definition of the word "employer" in Section 2, Clause (g) and of the term "industrial dispute" in Section 2, Clause (k) and reading Section 10 argues that the reference is an industrial dispute as contemplated in Section 2, Clause (k) which means it must be a dispute or a difference between either (1) employers and employees or (2) between employers and workmen, or (3) between workmen and workmen, and should be connected with employment and non-employment, or the terms of employment or with the conditions of labour of any person. So the industrial dispute referred to can apply only to such classes of persons and a third party against whom there can be no industrial dispute as is contemplated in Section 10, Clause (k) cannot be added as a party.

He further wanted the Court to read Sections 15, 18 and 29 together. Section 15 lays down the duties of tribunals and states that when an industrial dispute has been referred to the tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable, on the conclusion thereof, submit its award to the appropriate Government. Section 18 as already referred to in so far as it applied to industrial disputes is to the effect that an award which has become enforceable shall be binding on the four classes of persons mentioned in Clauses (a), (b), (c) and (d). Finally, great reliance is placed upon the implications contained in Section 29 wherein a penalty is imposed for breach of a settlement or of an award and it is to the effect that if any person commits a breach of any term of a settlement or award, which is binding on him under the Act, he shall, on first conviction be punishable with a fine and so on. Beading these three sections together the point urged is that the award can only relate to what the industrial dispute can refer to and can under no circumstance have reference to a third party's liability.

Because u/s 29 it is not possible in the present case even if the Government are made a party to pass an award binding on the Government, it is urged that the legislature did not contemplate the addition of parties other than those originally intended or added u/s 10(5). Reliance was also placed upon the expression "establishment" in Section 10(5). A comparison of Section 29 Of the Australian

Commonwealth Conciliation and Arbitration Act of 1904-1934 with Section 18 of the Industrial Disputes Act has been, attempted to be made on behalf of the state for showing that in very many respects the two sections are similar and from that a conclusion is sought to be drawn that if in Australia the tribunal has no power to add persons as parties to the industrial dispute, the position under the Indian Statute should also be the same. See pp. 79 and 80 of McWilliam and Boyt on Commonwealth Industrial Conciliation and Arbitration Law. Clause (W of Section 29 of the Australian Act is somewhat similar and it is as follows:

"All parties who have been summoned or notified to appear as parties to the dispute, or required to answer the claim, whether they have appeared or answered or not, unless the court or Conciliation Commissioner is of opinion that they were improperly made parties;"

In my view the similarity of language between Section 18(b), Industrial Disputes Act and Clause (b) of Section 29 of the Commonwealth conciliation and Arbitration Act, if at all, is against the contention put forward on behalf of the State. It is difficult to see that when the tribunal or conciliation officer is permitted to summon persons and add them as parties to the dispute, that power should be restricted only to parties who are on the rolls at the time of the original dispute. The phrase "all other parties summoned to appear" occurring in Clause (b) of Section 18 is significant and indicative. In these circumstances it seems to me that the order of the Tribunal holding that it has jurisdiction to add the Government as a party to the dispute is correct.

6. As regards the second question, the tribunal placed in the forefront a consideration of the point as to whether there is a liability on the Government to render compensation to the workers whose continuous employment suffered as a result of the actions on the part of the Government and was of opinion that if there is such an obligation then the Government can be a necessary or a proper party in these proceedings. For this purpose the correspondence covering over a period from 1950 to 1953 that passed between the Government and the Mill Owners' Association was considered by the Industrial Tribunal. After a review of the correspondence the tribunal was of opinion that the Mill owners did not take any steps or even suggest the possibility of themselves producing the necessary power by installing generators in the various Mills to meet the deficiency occasioned by the Government's cut in the power supply and that there was nothing on record to show that an offer to that effect was made by any of the Mills or that such an offer was turned down by the Government.

The further finding is that the agreement between some of the mills and the Government that the entire quantity of electricity necessary for the working of the mills would be taken from the Government source and that the mills should not take upon themselves the task of generating any quantity of electricity necessary for their needs, if the Government is in a position to supply, would apply only if the Government is in a position to supply the entire quantity. If there is inability on the part of the Government to provide for adequate supply,

then the tribunal finds that there is no prohibition upon the consumers having their own private source of supply. Finally the tribunal came to the conclusion that whatever be the nature of the claim which the mill owners may have against the Government with regard to the restriction upon the supply of power, that will have no connection with the dispute which has been referred to the tribunal because the rights which the management may have against the Government on the basis of the agreement are not relevant for the consideration of the question of the liability of the management with regard to the relief for Involuntary unemployment.

The conclusion therefore arrived at was that whatever rights the management of the mills may have against the Government for the so-called breach of the agreement to supply the necessary power, it is quite a different thing to say that those rights and liabilities should in any way affect the liability of the management with regard to their obligation to provide the workers for compensation during the periods of involuntary unemployment. The basis for that conclusion, according to the tribunal, was that in these proceedings the workers cannot claim against the Government any compensation for involuntary unemployment for the reason that the Government is not the employer. After coming to these findings the Industrial Tribunal was of opinion that the Government is neither a necessary nor a proper party to the dispute.

7. It is urged by Mr. Rajagopala Aiyangar that the aforesaid conclusions of the tribunal are themselves sufficient to show that though not a necessary party, the Government is a proper party for adjudication of these disputes. His argument is that even though in these proceedings it is not possible to make the Government liable to pay any compensation for involuntary unemployment of the workers still if the tribunal were to find after enquiry that the employers are not responsible for the state of things that has come into being but that the same was brought about by the negligence, supineness, or breach of contract on the part of the Government, then such a finding would be binding on the Government with the result that if the employers are made to pay compensation to the workers, then it is open to the employers to have recourse against the Government by separate proceedings for the realisation of the amount of compensation which they are compelled to pay to the workers. In other words, learned counsel says that by making the Government a party to the proceedings and fixing the blame on them for the state of things, the employers can recoup themselves of any losses which, they might suffer by being compelled to pay compensation to the workers.

He invited my attention to the various letters that passed between the Government and the mill owners. It is unnecessary to refer to them in any great detail. A careful reading of the various letters that passed between the parties would lead one to the conclusion that to a certain extent the mill owners had been lulled into a sense of security whether false, or otherwise by certain observations contained in the letters written on behalf of the Government. I may say that the mill owners were alive, much earlier than the Government to the

possibility of the failure of the monsoon and the Government's liability to supply them with the necessary power. Even so, the question has to be considered whether the Government is a necessary or proper party.

8. In the press release dated 22-2-1951, the Government expressed the view that there was no fear of any further power cut in the hydro-electric area from 1952 onwards even if there was another failure of the north-west monsoon in 1951. But this optimism of the Government was not justified because even in 1952 they had still further to reduce the power supply. On 21-1-1952 the representative of the mill owners referring to the 15 per cent cut on electric supply on account of the low water level in the hydro-electric systems pointed out that the mills have had to suffer by the imposition of the cut for which the industry cannot be made responsible. In letter No. 4199 E. 52-3 dated 14-3-1952, issued from the public works department of the Government of Madras, it is stated that the existing power shortage in the hydro-electric areas could have been averted but for the installation programme of the Government; particularly the commissioning of Moyar scheme having been postponed from January 1952 to May 1952 owing to the unforeseen delay in the receipt of equipment from abroad.

On 16-5-1952 the Honorary Secretary of the Southern India Mill owners Association wrote to the Government inviting their attention to the fact that the hopes entertained by the authorities have not materialised at all and that the cut in the supply position has almost become a regular feature year after year. The secretary requested the Government to inform him what the Government's plans are for the continuous supply to the Industrial units without having to impose a cut from January onwards every year. It was only much later, i.e., on 4-2-1953, that the Superintendent Engineer of the Pykara Electricity System informed the Southern India Mill Owners Association among others that a 50 per cent cut in the consumption of electricity had to be enforced from 1-2-1953 in view of the critical power position in the hydro-systems and the addressees of those letters were requested that in order to tide over the emergency such of those consumers who have standby auxiliary plants should run the same to the maximum extent, and to limit consumption from the departmental mains to the minimum.

9. The correspondence produced consists of nearly 28 letters and memos as well as telegrams and it is possible to infer from them that to a certain extent, if steps had been taken at the proper time either by the Government or by the mill owners, it would have been possible to avert the difficulties that arose as a result of the inability of the Government to supply the necessary quantity of electricity in the hydro-electric areas. It is too premature at this stage to come to a conclusion fixing the responsibility for this state of things on the part of the Government or the mill owners. Granting that to a certain extent it was the Government's attitude and decision that created the state of things, still can it be said that the Government is a necessary or a proper party?

10. Under the provisions of Order 1, Rule 10, C. P. C. there have been numerous decisions regarding the meaning of the term "necessary" or a "proper" party. As the matter is well settled, I do not desire to embark upon a discussion of the various rulings on the point and the same has not been attempted by either side. There can be no dispute whatever that the Government is not a necessary party, the reason being that the tribunal cannot make the Government liable to pay any compensation in these proceedings for the involuntary unemployment caused to the workers. The Industrial Disputes Act does not envisage a situation whereby the Government can be made liable unless it be that the Government themselves are employers as contemplated in the provisions of the Act in which case there will be no kind of distinction between a private employer and the Government as employers. But taking the view most favourable to the petitioner, all that can be said is that by certain actions of the Government, the employers found it impossible to provide full period of work to the employees. Even in such a case can it, be said that the Government should be made a party at all? Since no relief can be given against the Government, they cannot certainly be a necessary party.

11. But are they proper parties? On the analogy of the third party procedure obtaining on the original side of this High Court and now introduced in the Civil P. C. for the mofussal as well, the learned counsel contends that the Government would be a proper party. It was also brought to my notice that under Article 41 of the Constitution there is a directive principle that the State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, and to public assistance in cases of unemployment. But the learned Advocate General counters this argument by saying that the unemployment referred to in this Article is not the kind of unemployment which we have in the present case where it is not a case of unemployment as such but a case of insufficiency of employment and what is contemplated in Article 41 is that the State should do its utmost to see that people do not go about without any work at all. I do not think, that the directive principle contained in Article 41 can have any application in the decision of this dispute. It is a general direction or behest which the framers of the Constitution have given to the succeeding Governments to see that in the welfare state what is contemplated by the Constitution there shall be no undeserved want or unemployment.

It may be that under certain circumstances there is a duty or liability cast upon the State Government to find work for all persons in the State. But we have not yet reached such a happy state of existence. If the Government is to be made a party to these proceedings on the ground that it was due to their action that involuntary unemployment was caused on account of the short supply of electricity, then under similar conditions, if cotton suppliers are not able to supply sufficient quantity of cotton to the mills as a result of which full employment cannot be given to the employees thereof, in any dispute arising under those circumstances it might be argued that cotton growers must also be made parties to the dispute. This analogy shows the untenability of the contention.

12. It is further argued on behalf of the petitioner that even if no relief can be given against the Government still there may be a binding declaration which the Government could not get over later on. In my opinion this is too remove a contingency for the impleading of the Government.

13. Mr Rajagopala Aiyangar stated that if the Government is added as a party there would be greater facilities for summoning the records of the Government and making them available for the tribunal in order that the responsibility on the part of the Government for the state of things can be more effectively and palpably demonstrated. His contention is that if the Government is not made a party, they would not produce the necessary records. The learned Advocate General has very rightly conceded that whatever documents the tribunal summons the Government to produce will be placed at the disposal of the tribunal except such of those documents over which privilege can be claimed by the Government. The learned Advocate General says that even if the Government are made a party still if the documents are privileged they cannot be used at the enquiry. I am satisfied that in these enquiries the Government would render all possible help by producing every document necessary for the expeditious disposal of this dispute.

14. I am not satisfied that the order of the Industrial Tribunal that the Government is not at necessary or a proper party, is, without jurisdiction or is apparently erroneous. No writ can, therefore issue and this petition is dismissed.