

(1957) 03 KL CK 0029

In the High Court Of Kerala

Case No : O. P. No. 34 of 1956 (K)

Secretary, Sri Chitra Mill Workers" Union

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 11-03-1957

Acts Referred:

Constitution of India, 1950 — Article 14

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

Citation : (1957) KLJ 499

Hon'ble Judges : M. S. Menon, J

Bench : Single Bench

Advocate : P. Balagangadhara Menon, for the Appellant; K P. Abraham, George Kurian, M. M. Gherian and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.—The petitioners are the workmen of the Sri. Chitra Mill, Kalamassery, Alwaye, represented by the Secretary, Sri. Chitra Mill Workers Union and the respondents are the State of Kerala and the Manager of the Mill above mentioned. On 12-6-1956 the workmen submitted a memorandum of demands to the employer (Ext. A). The Assistant Labor Commissioner, Trivandrum, held conciliation proceedings u/s 12 of the Industrial Disputes Act, 1947. Sub-section (4) of that section provides that if no 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.

Ext. R 2 is the report of the Assistant Labor Commissioner, Trivandrum, under sub-section (4) of section 12.

2. The report reads as follows:

The Sri Chithra Mill, Alwaye, a textile factory solely engaged in bleaching, employs about 100 workers including staff. The staff and the workmen are organized in the Sri. Chithra Mills Employees' Association and the Sri. Chithra Mills Workers' Union respectively. The Sri. Chithra Mill Workers' Union which represents the workmen placed a memorandum of demands which "inter alia" related to wage increase, Bonus for 1955, gratuity, leave, acting allowance etc. before the management on 22-6-1956. The direct negotiations held by the Union with the management over the demands having failed, the representatives of the workmen requested me for taking up the dispute for conciliation. Thereon, I convened a joint conference of the parties on 7-8-1956 in my office.

The Manager of the Mill and the Secretary and other executive committee members of the Union were present for the conference. After detailed examination of the issues regarding Wage increase and gratuity, it was suggested that the recommendations of the Textile Committee recently constituted by the Government be awaited and the demands for wage revision and gratuity were thus agreed to lie over for six months. After discussions, the minor issues such as leave acting allowance etc., were also dropped by the Union. Thus the demand for Bonus for the year ending 1955 became the only issue in dispute. The management said that they have already paid one month's basic wages for Easter. Besides this, they offered to pay one more month's basic wages in full settlement of the claim for Bonus for the year. As the discussions could not be completed on 7-8-1956 it was continued on 10-8-1956. The Union demanded 3 months' basic wages as Bonus and they were not willing for an agreement for anything less than 3 months' basic wages. The representatives of the management straightaway said that the demand was too high and there was no proportion at all. As both the parties were adamant in their attitude the discussions broke.

The management of the Sri. Chithra Mill is now engaged in a large scale expansion scheme intended for introducing spinning and weaving also in the Mill, It is told that their development programme will cost several lakhs of, rupees. Any deterioration in the relations between the management and the present labor in the Mills, at this time will severely affect the expansion programme. As the dispute could not be settled by conciliation I fear that the workers may create troubles the consequences of which will straightaway fall upon the development of this industry. So, I recommend that the dispute may be referred for adjudication under Sec. 10 (i) (c) of the Industrial Disputes Act 1947 to the Industrial Tribunal, Ernakulam.

Issue. To what quantum of bonus are the workmen entitled for the year 1955?

After receiving the report the Government issued the following order on the 31st August 1956:

Whereas, the Government are of opinion that an Industrial Disputes exists

between the Manager, Sri. Chitra Mill, Kalamassery, Alwaye, and the workmen excluding the staff of the above concern represented by the Sri. Chi tea Mill Workers" Union, Kalamassery, Alwaye, in respect of matters mentioned is the annexure to this order,

And, whereas, in the opinion of Government it is necessary to refer the said Industrial Dispute for adjudication,

Now therefore, in exercise of the powers conferred by Section 10 (1) (c) of the Industrial Disputes Act of 1947 (Central Act XIV of 1947) the Government hereby¹ direct that the said industrial dispute be referred for adjudication to the industrial Tribunal, Ernakulam.

(Annexure)

To what quantum of bonus are the workmen entitled for the year 1955". (Ex. B.).

The contention of the petitioners before me is that all the matters covered by the memorandum of demands dated the 12th June 1956 should have been referred for adjudication and not merely the one issue mentioned in the Annexure to Ex. B.

3. The Assistant Labor Commissioner, Trivandrum was apparently under the impression that only one matter called for immediate adjudication, i.e., the quantum of bonus for the year 1955. This is clear from his statement in Ex. R 2.

Thus-the demand for Bonus for the year ending 1955 became the only issue in dispute.

4. Sub-section (3) of section 12 of the Industrial Disputes Act, 1947, provides:

If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

It is admitted that there is no memorandum of settlement signed by the parties in respect of any of the matters covered by the memorandum of demands dated the 12th June 1956 and in respect of which the conciliation proceedings were held by the Assistant Labor Commissioner, Trivandrum.

5. In paragraph 4 of the affidavit in support of the petition it is stated:

I submit that on the 4th of September 1956, I wrote a letter to the Joint Adviser to Government requesting that all issues except the questions relating to deduction in Provident Fund and increase of wages may be referred to the Tribunal for Adjudication. However, I did not get a reply. Therefore, on 5th October 1956 I sent a registered letter to the Secretary to the Government, Development Department, Trivandrum, requesting the Government to exercise the jurisdiction vested in them u/s 12 (5) of the Industrial Disputes Act, 1947 and refer all the outstanding issues to the Industrial Tribunal or to state the

reasons for non-reference. I have not also received any reply to this letter. A true copy of this letter is submitted herewith and is marked as Ext. "C".

Ext. C reads as follows:

Government by an Order L. Dis. 20948/56/DD dated 31st August 1956 have referred an Industrial Dispute between Sri Chithra Mills, Kalamassery, Alwaye and their workmen represented by Sri Chithra Mill Workers' Union, Kalamassery; The only issue referred to is to what quantum of bonus are the workmen entitled for the year 1955?

In this connection, we beg to inform you that the memorandum of demands submitted to the Manager, Sri Chithra Mills covered seven issues regarding wage increase, annual bonus, gratuity, provident Fund, acting wages, leave and recruitment. These are issues on which no settlement has been effected. We understand that the conciliation Officer had recommended that all issues be referred to the Industrial Tribunal. But we have not been informed whether the other issues also have been referred. Government have referred only the issue of bonus and have not stated the reasons why the other issues have not been referred. We consider this an act of patent discrimination. In the matter of referring disputes to the Industrial Tribunal, Government have acted in a grossly discriminating manner and even violating the guarantee of equal protection of laws embodied in Article 14 of the Constitution of India.

We therefore request you to exercise your jurisdiction vested in Section 12 (5) of the Industrial Tribunal Act and refer all the outstanding issues to the Industrial Tribunal and state the reasons for non-reference, if any. We reserve the right to move either the High Court of Judicature, Travancore-Cachin State, or the Supreme Court of India, if this legitimate request is denied to us.

Awaiting a reply at the earliest.

The statement:

We understand that the Conciliation Officer had recommended, that all issues be referred to the Industrial Tribunal.

It is clear, must have been based on a misapprehension,

6. Sub-section (5) of section 11 provides that:

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 of Tribunal, it may make such reference. Where the appropriate Government not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

It is agreed that the Government have not communicated to the workmen the reasons for not referring the various matters in dispute covered by the memorandum of demands dated the 12th June 1956 and in respect of which no

reference for adjudication has been made.

7. Mr. K.P. Abraham, learned counsel for the employer, submits that as there is a reference for adjudication in this case, viz., of the dispute relating to the quantum of bonus payable to the workmen for the year 1955, there, is no obligation on the part of the Government to communicate its reasons for not referring the other matters in dispute. According to him the provision:

Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore applies only to cases where there is no reference at all and not to a case like this where there is a reference for adjudication of at least one of the matters in dispute.

8. I cannot agree. An Industrial dispute may relate to one matter or many and as I understand the section when only some of the matters in dispute are referred for adjudication the Government is bound to record and communicate to the parties concerned its reasons for not referring those matters in dispute which are not included in the order of reference.

9. The petitioners agree that all that I need do is to direct the Government to record and communicate to the parties concerned its reasons for not referring those demands covered by the memorandum of demands dated the 12th June 1956 (Ext. A) and not covered by the order of reference (Ext. B). Order accordingly. The petition is allowed in the manner and to the extent indicated above. No costs.