
(1964) 12 CAL CK 0022
In the Calcutta High Court
Case No : Civil Rule No. 3729 of 1961

Shellac Industries Ltd.

APPELLANT

Vs

Their Workmen

RESPONDENT

Date of Decision : 16-12-1964

Acts Referred:

General Clauses Act, 1897 — Section 21

Industrial Disputes Act, 1947 — Section 10, 10(1), 33B, 7, 7(1)

Citation : AIR 1966 Cal 371

Hon'ble Judges : S. Datta, J; R.N. Dutt, J

Bench : Division Bench

Advocate : P.K. Sen Gupta and Satish Chandra Roy, for the Appellant; Salil Kumar Datta, for the Respondent

Judgement

Datta, J.—This is a Rule directed against the award of the 7th Industrial Tribunal, West Bengal arising out of a dispute between the workers of the petitioner company represented by its Union, the Shellac Industries Workers' Union and the said company M/s Shellac Industries Ltd.

2. There was a dispute between the workers and the company which was settled through the intervention of the Labour Department. Government of West Bengal. The terms of settlement are recorded in a memorandum dated the 14th October 1958. The terms of settlement did not work out satisfactorily. On the 21st March, 1959 the company closed down its factory by declaring a lock-out.

3. On the 16th April, 1959, the Government of West Bengal, by its Labour Department Order No. 1479/1R-1R/11L-405/58 dated the 16th April, 1959, referred the following issue as a dispute for adjudication to the First Labour Court. Government of West Bengal:

"What relief, if any, the workmen are entitled to for the lock-out period from 21-3-59".

4. Thereafter, the company closed the workings of the factory permanently by

notices dated the 24th April, 1959 and paid compensation to the workers. On the 3rd July, 1959 the company leased out its factory to M/s. Ramkuma Kejriwala.

5. The Trade Union of the company filed its statement before the said First Labour Court On the 21st June, 1960 when the reference was pending before the First Industrial Tribunal, the State of West Bengal constituted the 7th Industrial Tribunal under notification No. 3115-1R/1R/3A-6/59.

6. On the 11th July, 1950 the said First Industrial Labour Court constituted on the 5th April, 1957 was abolished by notification No. 3508-LR/1R/3A-6/59.

7. On the 19th July, 1960 the Government of West Bengal. Labour Department issued a notification wherein they stated inter alia that an industrial dispute exists, that the dispute was referred to the First Labour Court for adjudication that the First Labour Court was replaced by the 7th Industrial Tribunal constituted under the notification dated 21st June. 1960 that the First Industrial Tribunal was abolished by a notification dated 11th July, 1960 and then recited as follows:

"Now therefore, in exercise of the power conferred by Section 10(1) Sub-clause (4) of the Industrial Disputes Act 1947 (XIV of 1947). The Government is pleased to refer to the 7th Industrial Tribunal constituted under notification No 3115. 1R/1R/3A-6/59 dated 21-6-60 the proceeding of the industrial disputes between the said company and their workmen relating to the matters specified in the schedule below for adjudication in supersession of the orders contained in Order No. 1479/1R/11L-4 and 5/58 dated 16-4-59 referring the said dispute to the First Labour Court. The said 7th Industrial Tribunal shall for this purpose meet at such places and on such dates as it may direct. Schedule 1.

What relief, if any, the workmen are entitled to for the lock-out period from 21-3-59".

8. Thereafter on the 20th day of July, 1961, the 7th Industrial Tribunal gave an award in favour of the workers. The company being aggrieved by the said order made the application under Article 227 of the Constitution.

9. Mr. Sen, learned Advocate for the applicant company submitted that the State was not competent to supersede the prior order of reference dated the 16th day of April, 1959 to the First Labour Court and consequently the reference u/s 10(1) (d) of the very same dispute to the 7th Industrial Tribunal was illegal and without jurisdiction. In this connection, he strongly relied upon the case of The State of Bihar Vs. D.N. Ganguly and Others, .

10. At the outset, it may be noticed that the notification dated the 11th day of July, 1960, was not made u/s 33B which enables the State Government to withdraw a pending proceeding from one Industrial Tribunal and transfer the same to another Industrial Tribunal for disposal but was made u/s 10(1) Sub-clause (4) on the footing that the prior reference to the First Tribunal was dead and non-existent. It may be further noticed that the said notification or order

could not have been purported to be made u/s 33B, for according to the position taken by the State Government, the disputes could not have been withdrawn from the First Tribunal for it had been already abolished and hence it could not have been transferred to the 7th Tribunal.

11. It is now necessary to turn to the case of *The State of Bihar Vs. D.N. Ganguly and Others*, .

12. In the case of *The State of Bihar Vs. D.N. Ganguly and Others*, the State Government referred by a notification, the dispute of 31 workers to an Industrial Tribunal consisting of one Mr. Ali Hossain. Thereafter, the State Government referred a similar dispute with another 29 workers to the same Tribunal consisting of Mr. Ali Hossain. "While the proceedings in respect of the two references which had been consolidated by the Tribunal were pending before it had made some progress, the Government of Bihar issued a third Notification No. III/ D1. 1601/55-L-13028 on September 17, 1955 by which it purported to supersede the two earlier notifications, to combine the said two disputes into one dispute, to implead the two sets of workmen involved in the two disputes together, to add the Bata Mazdoor Union to the dispute and refer it to the adjudication of the Industrial Tribunal of Mr. Ali Hossain as the sole member." The Tribunal on receipt of the third notification closed the two earlier references. The question for consideration of the Supreme Court was whether the order of supersession made by the third notification was valid. In those facts, the Supreme Court held,

"Where an Industrial dispute has been referred to a Tribunal for adjudication by the appropriate Government u/s 10(1)(d) of the Industrial Tribunal Act, 1947, the said Government cannot supersede the reference pending adjudication before the Tribunal constituted under it".

13. In the present case however there has been abolition of the Tribunal and thereafter a reference u/s 10(1)(d) of the Act, of the same dispute was made to another existing Tribunal in supersession of the earlier order of reference.

14. Hence, it is not a mere case of an order of supersession or cancellation of the prior order of reference, when the earlier Tribunal to which the reference was made was in existence. It is a case of abolition of the earlier Tribunal or putting an end to it and then an order of reference u/s 10(1)(d) to another Tribunal.

15. Therefore, *The State of Bihar Vs. D.N. Ganguly and Others*, cannot be decisive.

16. In my opinion, the primary question in this case is whether the State Government by its executive act can abolish an Industrial Tribunal constituted by it u/s 7, after the State had referred an industrial dispute u/s 10(1)(d) to the Tribunal for its decision.

17. Section 7 confers power upon the State Government to constitute an Industrial Tribunal. Section 8 gives power to the State Government to fill up

vacancies in the office of Chairman or any other member of the Board. Section 15 imposes a duty upon the Tribunal to hear the matter referred to it expeditiously u/s 10 and make an award. Section 33B however enables the State Government to withdraw from any Labour Court or tribunal any pending proceeding the same disputes or dispute for hearing to mother Labour Court or tribunal for disposal either de novo or from the stage at which it was so transferred".

18. Hence, the Industrial Tribunal continues to exist till an award is made subject to the possibility of intervention on the grounds mentioned in Sections 8 and 33B and consequently there is no express power in the State Government to abolish a tribunal when a dispute is referred to it u/s 10(1)(d) till it gives an award.

19. The next question for consideration is whether in the context or the scheme of the Act and or its provisions, Section 21 of the General Clauses Act can enable the State to abolish a tribunal for it is the authority which had constituted it.

20. It is patent from the scheme of the Act that once a reference is made to a tribunal, the tribunal is charged u/s 15 of the Act with the duty of holding its proceedings expeditiously and submit its award to the appropriate Government. Once the award is made it has to be published u/s 17 and it becomes enforceable on the expiry of thirty days from the date of its publication u/s 17. In certain cases, the State is given power to reject or modify the award. An award made by the tribunal should ordinarily remain in operation for a period of one year. This period may be curtailed or extended by the State.

21. It will be noticed that the State does not come into the picture once a reference is made until the tribunal submits its award to the appropriate Government except when Section 8 and 33B come into play. Sections 8 and 33B impliedly suggest that there are no other grounds for intervention by the State during the progress of the reference. Therefore, in the intervening period from the time of the commencement of the reference till the making of the award, the tribunal proceeds with the reference without interference and direction from the State.

22. Therefore, in my opinion, there is no room even by implication for the application of Section 21 of the General Clauses Act in the Scheme of the Industrial Disputes Act, 1947.

23. The scheme of the Act with particular reference to Section 10 has been considered elaborately by the Supreme Court in the case of *The State of Bihar Vs. D.N. Ganguly and Others*, . There, it was held, that Section 21 of the General Clauses Act could not be taken recourse to in the context of the Act. Therefore, though the case of *The State of Bihar Vs. D.N. Ganguly and Others*, does not deal with the precise point before us namely the right of the State Government to invoke Section 21 of the General Clauses Act and cancel or supersede the order of constitution of a tribunal made u/s 7, the pronouncement made therein do generally support the view that the Act is self-contained and the scheme leaves no room for the application of Section 21 of the General Clauses Act.

24. Hence, a tribunal cannot be abolished merely because the State Government chooses to put an end to it when a reference is pending before it for the State cannot do indirectly under the guise of an order of supersession, what is not permissible to it expressly or impliedly under the Act. Hence, in my view in law the State was incompetent and had no jurisdiction to abolish the First Tribunal and thereafter refer the same dispute to the 7th tribunal and consequently the reference of the very same dispute u/s 10(1)(d) to the 7th Industrial Tribunal was clearly illegal and without jurisdiction and accordingly the Award of the 7th Industrial Tribunal is without jurisdiction and void.

25. Mr. Dutta learned Advocate appearing for the respondent contended that such construction of the Act would manifestly defeat the object of the Industrial Act which was enacted for the benefit of the workers and lead to injustice to his poor clients. In my opinion, the above conclusion may lead to unfortunate results. This however cannot be a sufficient consideration for giving a beneficial construction, if the law on the point as indicated above is the correct law then the law must take its own course.

26. Mr. Datta further submitted that this order dated 19th July, 1960 may be read as an order u/s 7 followed by an order u/s 10 of the Act.

27. In this connection, the said decision in the *Minerva Mills Ltd. Vs. Their Workers*, was relied upon. In that case the Government of Mysore constituted a tribunal u/s 7 for a period of one year consisting of a Chairman and two members for the adjudication of industrial disputes in accordance with the provisions of the Act. The tribunal had framed issues in respect of one of the disputes but had not proceeded to record evidence. At this stage, the Government by another notification constituted another tribunal on the 27th June, 1952 for adjudication of the very same disputes and acting u/s 19(1)(c) of the Act referred the disputes pending before me First Tribunal to the newly constituted tribunal. Their Lordships held that the Government had the power to appoint a fresh tribunal u/s 7 as the life of the First Tribunal automatically came to an end by effluxion of time. It also observed that "no question of the vacancy in this office really arose and it was not a case falling under Sub-clause (2) of Section 8 but the situation that arose fell within the ambit of Section 7". Therefore, the Court held that the second notification was made u/s 10 and the reference to Section 8 and to a vacancy in the notification are in the nature of surplus and are the result of confused thinking on the part of those responsible for this notification and in the end having regard to the reference to Section 10(1)(c) in the notification or order their Lordships held that the fresh tribunal was constituted in accordance with law. In this case of *Minerva Mills Ltd. Vs. Their Workers*, the question of pending reference or abolition of a labour court did not arise though in that case a tribunal had come to a natural death by effluxion of time. Hence, the *Minerva Mills Ltd. Vs. Their Workers*, can be easily distinguish ad.

28. In this connection reliance was placed on the observations of Supreme Court

in *The State of Bihar Vs. D.N. Ganguly and Others*, with reference to *Minerva Mills Ltd. Vs. Their Workers*, as follows:

"Strictly sneaking there was no occasion to withdraw any dispute from the first tribunal; the first tribunal has ceased to exist; and so there was no tribunal which could deal with the remaining disputes already referred u/s 10(1). That is why the Government purported to appoint a second tribunal to deal with the said disputes. In our opinion, the decision in the *Minerva Mills Ltd. Vs. Their Workers*, cannot be cited in support of the proposition that the appellant has power to cancel the order of reference made by it u/s 10(1)".

29. The Supreme Court in the case of *The State of Bihar Vs. D.N. Ganguly and Others*, again when dealing with the case of *Iyappin Mills (Private) Ltd., Trichur v. State of Travancore-Cochin*, 1958-1 Lab LJ 50 (Ker) observed at p. 1096 (of 1958 SCA): (at p. 1025 of AIR) that the case

"is not of much assistance because in this case the learned Judges appear to have taken the view that the first tribunal before which the industrial dispute was pending had ceased to exist at the material time when the dispute was referred by the local Government for adjudication of the second tribunal. If that be the true position the conclusion of the learned Judges would be supported by the decision of this Court under *Minerva Mills Ltd. Vs. Their Workers*, "

30. Therefore, prima facie the observations of the Supreme Court apparently support the contention advanced on behalf of the workers for it may be said that upon the abolition of the Tribunal, it ceased to exist.

31. These observations as to cessation of existence when read with the fact that in both cases the original tribunal had ceased to exist by effluxion of time, do not and cannot help the respondent in the present case when the Tribunal was put out of existence forcefully by an executive direction.

32. In this connection, he relied upon the decision of *R. G. Oil Mills and Partnership firm v. L. A. Tribunal* AIR 1964 SC 567. In that case the disputes were referred to a tribunal consisting of Mr. Kurian on May 13, 1955. Thereafter pending the adjudication Mr. Kurian retired from service. Thereupon, Government of Hyderabad made the following notification on June 2, 1955.

"In exercise of the power conferred by Subsection (1) of Section 7 of the Industrial Disputes Act, 1947 (XIV of 1947) and in supersession of the Labour Department Notification No. B. 189/54/ 134 dated 15-10-1954 the Rajpramukh hereby constitutes Shri Bhikaji Patil as its sole member for the adjudication of industrial disputes in accordance with the provisions of the said Act with immediate effect."

33. In these circumstances, the Government did not take action under Sub-section (2) of Section 8 after Mr. Kurian's services ceased to be available but instead of doing that the Government took action u/s 7 Sub-section (1) of the Act in supersession of its previous notification and constituted a fresh industrial

tribunal consisting of Mr. Patil as its sole member.

34. Their Lordships of the Supreme Court held that the order of supersession and reconstitution of the Tribunal was illegal inasmuch as no fresh reference to the new Tribunal was made u/s 10(1).

35. The Supreme Court however observed as follows:

"We do not consider here whether the old tribunal still continues to exist and there was merely a vacancy therein and therefore, there was no occasion to constitute a fresh tribunal under Sub-section (1) of Section 10 because, having constituted a fresh Tribunal the Government failed to refer the dispute in question to it under Sub-section (1) of Section 10 of the Act."

36. Hence, the R. G. Oil Milk case AIR 1964 SC 567 does not help the respondent.

37. It will be noticed that the Supreme Court did not decide in this case whether Section 7 could be invoked in such circumstances, but considered the position upon the footing that if such an order u/s 7 could be made, it was not sufficient to make an order u/s 7 but it was also necessary to make an order u/s 10.

38. Hence, the contention advanced by Mr. Datta must be rejected.

39. In my opinion, the order appointing a fresh tribunal u/s 7(1) and referring the same dispute to a different Tribunal u/s 10 no doubt can be made when the Tribunal already constituted by reason of something inherent in it such as the death or resignation of the members of the tribunal or by some subsequent events such as lapse of time ceases to exist. This is however a different thing from a case where there is no retirement, no case of vacancy and no case of application of Section 8, but a case where a Tribunal was abolished when a reference was pending before it though it is not permissible under the Act. Hence, the notification or order abolishing the First Tribunal and the consequent reference or the same dispute u/s 10(1) to the Tribunal were clearly without jurisdiction.

40. Hence, in the result, in my opinion the Rule must be made absolute.

41. There will be no order as to costs.

R.N. Dutt, J.

42. I agree.

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