

(2018) 07 BOM CK 0119

In the Bombay High Court

Case No : Writ Petition No.6753, 6823, 6824, 6879, 6878, Of 2018, Writ
Petition (Stamp) No.16156 Of 2018

Shree Ambika Printers and Publications

APPELLANT

Vs

Mrs. Bharati Umesh Kotiyan And Other

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17, 17(1), 17(2)
Constitution of India, 1950 — Article 136, 226

Citation : (2018) 07 BOM CK 0119

Hon'ble Judges : S.C. GUPTE, J

Bench : Single Bench

Advocate : Meelan Topkar, Pavitra Manesh, Umesh Sharma, Agnel Carneiro,
Mangesh Chavan

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of Counsel.

2. This petition challenges an order passed by the Labour Court at Bandra, Mumbai, in a reference made to it by the State Government under Section

17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (â??Actâ?). The

impugned order is passed on a miscellaneous application made in the reference (Exhibit CÂ7). The dispute between the parties concerned amounts

due under the Act to the second party journalists from their employer, the first party newspaper establishment. The reference was opposed by the

newspaper establishment (the Petitioner herein) on various grounds, including some grounds, which bore on the jurisdiction of the Labour Court to

entertain the reference. The case of the establishment was that the matters reflected in the reference order involved classification of the newspaper establishment as per Majithia Award, by which the emoluments payable to journalists and other newspaper employees of the establishment were governed. Majithia Award classifies newspaper establishments inter alia on the basis of their gross annual revenues. The parties in the present case are not ad idem on the correct classification to be applied to the Petitioner establishment. Whereas it is the case of the journalists that the correct classification to be applied is Class IV, it is the case of the newspaper establishment that it ought to be classified under Class VII based on its annual gross revenue. It is submitted by the establishment that decision on classification in a contested matter like the present would require the Labour Court to travel beyond its jurisdiction under Section 17(2) of the Act. It is submitted that since this issue goes to the root of the matter, it should not only be framed, as has been rightly done by the Labour Court, but should also be heard and decided as a preliminary issue, which the Labour Court has refused to do. That is the controversy in the present petition.

3. Section 17 of the Act is in the following terms:

17. Recovery of money due from an employer.Â(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter

referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the

Labour Court may be recovered in the manner provided in sub-[^]section (1).

Going by its plain words, it is palpably clear that Section 17 deals with recovery of money due from a newspaper establishment to its employees, both

working journalists and other newspaper employees. Upon being satisfied as to the amount due under the Act, the State Government or its delegate

can straightaway issue a recovery certificate. The amount due under such certificate may then be recovered as arrears of land revenue. If, on the

other hand, any question arises as to the amount due under the Act requiring adjudication, then the State Government or its delegate may appropriately

refer the question to any Labour Court constituted by it under the Industrial Dispute Act, 1947. Such reference proceeds as if the question were a

matter referred to the Labour Court for adjudication under the Industrial Dispute Act. The decision of the Court is forwarded by it to the State

Government and, thereafter, the recovery provisions in sub-[^]section (1) may follow. That is the plain purport of Section 17 as it stands. It is at once

clear that reference is made to the Labour Court under Sub-[^]section (2) of Section 17, when the matter calls for adjudication in the sense in which it is

made under the provisions of Industrial Disputes Act by an industrial adjudicator. Whether any amount claimed by the employees is due or not under

the Act would involve various incidental questions, one of which could well be of classification of the newspaper establishment. After all, it is the

classification of a newspaper establishment which bears on the quantum of payment due to its employees. Wage board awards declared under the

Act ordinarily classify, and the particular award, namely, Majithia Award, indeed does so classify, newspaper establishments into different classes

based on their annual gross revenues. Wages and emoluments due to newspaper employees, including working journalists, are determined under these

awards by reference to such classification. Any dispute as to the amount due would, thus, necessarily involve determination of the appropriate

classification. It is on this basis that the instant reference appears to have been made to the Labour Court.

4. No doubt, it is open to the newspaper establishment to contest the jurisdiction

of the Labour Court as a reference court under Section 17(2) to go into questions, which do not appropriately fall under the provisions of Section 17(2). In that case, the Labour Court may have to frame appropriate issues and decide them whilst hearing the reference. There is no reason why any issue such as this should be treated, particularly, as a preliminary issue and must be heard in precedence over the other issues, which arise in the reference. Ordinarily, in labour law, framing and deciding questions of jurisdiction as preliminary issues, even if they go to the root of the matter, is not encouraged. The Supreme Court, in the case of D.P. Maheswari vs. Delhi Administration put it felicitously in the following words:Â?

â??There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues.

Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary question must therefore ask themselves whether such threshold partÂ?adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor

this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.â??

This exposition of the law at least makes one thing clear and that is that if a labour court or tribunal, whilst hearing an industrial dispute, refuses to frame a preliminary issue for a threshold partÂAdjudication, this Court is not expected to interfere in its jurisdiction under Article 226 and insist on deciding the issue as a preliminary issue.

5. Learned Counsel for the Petitioner relies on the case of Navbharat Press Employees Union vs. State of Maharashtra, Labour Industries & Energy

Department, Mumbai 2009 (III) CLR 782 in support of his submission that a reference under Section 17(2) in a matter such as this does not lie. In the

first place, this is really a matter of merits. We are not strictly concerned just now with matters of merits, namely, whether or not a reference such as

this would lie under the provisions of Section 17(2) of the Act. That question will have to be debated before the Labour Court at the hearing of the

reference. We are merely concerned here with whether or not this should be framed and heard as a preliminary issue. But, besides this, it cannot be

said with any assurance that the judgment of the Division Bench in Navbharat Press Employees Union actually decides the issue one way or the other

as a foregone conclusion. That was a case where employees of a newspaper had approached the Labour Commissioner with a request for reference

to the Industrial Tribunal constituted under the Industrial Disputes Act in connection with a dispute concerning conditions of their service. It was the

case of the employees that the conditions applied to them, including the wages paid, were not in accordance with Manisana Award, by which they

were governed. The Labour Commissioner held that the dispute was only in respect of implementation of Manisana Award and, accordingly, did not

fall within the ambit of the Industrial Disputes Act and could not be admitted to conciliation. Aggrieved by that order, the employees' union approached

this Court by way of a writ petition. One of the contentions raised before the Court in that case was that the dispute involved a mere implementation

or execution of Manisana Award and, hence, could not go by way of a reference under the Industrial Disputes Act. No doubt, our Court did examine

in the context of this submission the provisions of Section 17 of the Act, but the

whole focus of the enquiry was whether the matter involved a mere implementation or execution of the award. The Court was of the view that the basic question to be decided in that case was of correct classification of the newspaper establishment, whether the establishment fell within Class II or Class IV of Manisana Award. Considering that this would involve a detailed investigation as regards gross revenue of the establishment and various documents, including balance sheet of the establishment, would have to be gone into, the Court was of the view that Section 17 would not provide an appropriate remedy for the purpose.

Whether a particular matter would involve any investigation and to what extent, is essentially a matter of trial. It will depend on the facts and circumstances of each case. I cannot persuade myself to hold that the Division Bench in Navbharat Press Employees Union stated it as an absolute proposition of law that in no case can a dispute as to payment of money involving arguments on classification would lie in a reference under Section 17(2) of the Act. In the peculiar facts and circumstances of that case, the Court did not find a reference under Section 17 as an appropriate remedy.

These particular facts and circumstances involved, firstly, the claim of the workmen on working conditions generally, which is not a matter within the domain of a reference court under Section 17(2), and the possibility of a detailed investigation as regards gross revenue on examination of several documents. In other words, the question as to whether a reference would lie under Section 17(2) in a matter involving a classification issue, may be a mixed question of law and facts and not a pure question of law; its answer may depend on the facts and circumstances of the case.

6. If it is not a pure question of law, then, whether in a given case, considering the nature of judicial exercise involved and the extent of evidence to be considered, the Court should undertake the exercise as part of its jurisdiction or not, cannot be termed as a preliminary issue, which can be decided at the outset without the parties having brought out the entire gamut of their dispute before the Court. In the premises, no fault can be found with the impugned order of the Labour Court. The Labour Court has fairly and correctly applied its mind and framed issues, which bear on the jurisdiction of the Court in the reference. There is no particular reason, in the circumstances noted above, why these issues should be decided as preliminary issues.

Accordingly, no interference is warranted.

7. There is, thus, no merit in the petition. The petition is dismissed.

8. The observations made in this order are for the purpose of deciding the writ petition. The issues raised before the Labour Court in the reference,

including the questions of jurisdiction, shall be decided by the Court on their own merits. All rights and contentions of the parties in that behalf are kept

open.

9. Learned Counsel for the Petitioner applies for stay. There has been no stay during the pendency of the petition. Now that this Court has heard the

matter at length and comprehensively dismissed the petition, there is no question of granting stay of the impugned order. Besides, the Supreme Court,

in a group of contempt petitions filed by various parties, which also included the present Respondents, has expedited the hearing of the references

under Section 17(2). As a matter of fact, there is a direction to decide the references including the present within six months. The present reference

has been made in December 2017 and is now very much due for a decision. In the premises, the request for stay is rejected.