

(1962) 07 AP CK 0014
In the Andhra Pradesh High Court

Silk Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 06-07-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1962) 2 LLJ 591

Hon'ble Judges : Narasimham, J

Bench : Single Bench

Judgement

Narasimham, J.—The Sir Silk Ltd., Sirpur. Kaghaznagar, is the petitioner. The respondent 1 is the industrial tribunal. The respondent 2 is the union of workers of the petitioner company. The petition has been filed for the issue of a writ of certiorari quashing the order of the industrial tribunal, the respondent 1 herein, dated 20 June 1960 toy which the industrial tribunal held that it has jurisdiction to adjudicate on the matters referred to it by the Government tinder Section 10(1)(d) of the Industrial Disputes Act, 1947.

2. It is contended for the petitioner inter alia that the matters referred for decision by the industrial tribunal were covered by the binding settlements between the parties, viz., the employer, Sir Silk, Ltd., and the workers represented by the Sir Silk Employees" Union and therefore the tribunal was precluded from deciding the same matters.

3. On objections to jurisdiction being taken by the petitioner before the industrial tribunal, issues were framed in that regard and decided against the petitioner"s contentions.

4. It is the contention before me that the industrial tribunal had assumed a jurisdiction which it did not have by reason of the settlements between the parties relating to the matters raised in the reference, and that the order of the industrial tribunal is amenable to certiorari.

5. The matter may be clarified with reference to the order of reference by the

Government and the settlements which are relied on by the petitioner before me.

6. The order of reference dated 4 April 1959 published in the Andhra Pradesh Gazette dated 16 April 1959 in its relevant part states thus:

Whereas the Governor of Andhra Pradesh is of opinion that an industrial dispute exists between the workmen and the employers of Sir Silk, Ltd., Kaghaznagar, in respect of the matters specified in the annexure to this order;

And whereas in the opinion of Governor of Andhra Pradesh it is necessary to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947--Central Act XIV of 1947--the Governor of Andhra Pradesh hereby refers the said dispute for adjudication to the Industrial Tribunal, Hyderabad.

Annexure

1. Bonus for the year 1957-58.
2. Abolition of contract system of labour and absorption of the present workers on permanent basis.

(Sd.) V. Rajkshwar Rao, Secretary to Government

7. It would appear that formerly by a notification dated 27 May 1855 the then Government of Hyderabad had referred to the industrial tribunal the industrial dispute between the employers and the workmen of the Sir Silk, Ltd., on matters which were set out as below:

- (1) revision of grades of clerks;
- (2) making the daily rated clerks as monthly rated clerks;
- (3) providing of next higher grade with retrospective effect to clerks who have reached the maximum in the existing grade;
- (4) payment of dearness allowance to dally rated and monthly rated workmen.

8. The industrial tribunal, who had seisin of the matters, recorded a compromise and ordered accordingly by its order dated 22 September 11.9.55. In the order made by the industrial tribunal, it was specifically set out that the compromise related to many points which were not referred to the tribunal and that the parties, however, had agreed to bind themselves with the terms of the agreement on most points for a period of five years.

9. I may pause now to state that under the Industrial Disputes Act, 1947, the tribunal shall confine its adjudication to the points referred to it and matters incidental thereto. The disputes now raised did not fall within the subject-matter of reference to the industrial tribunal by the then Government of Hyderabad. These were also not matters incidental thereto; but the parties chose to lie an

agreement on matters extraneous to the then reference and they were recorded at the request of the parties. The award of the then industrial tribunal of Hyderabad both in part reference to the points referred to it and points extraneous to the reference was published in the Hyderabad Gazette dated 20 October 1955.

10. It is contended for the petitioner that among the other matters which were extraneous to the then reference, the matters now raised were included and were affirmed by subsequent "settlement dated 1 October 1957 and 16 December 1958. The particular terms of the then compromise embodied in the award are:

Clause 11.--The union and the workmen agree that they will not raise any dispute or demand in respect of bonus or production bonus until such time the company shows available surplus.

* * * Clause 20(b). The management thinks that the entire works of the company that are now being done by or through contractors and their workmen or temporary labour employed through time office of the company will be attended to and done most efficiently by the aforesaid 400 workmen so that the company will not have the need to employ any extra labour for any works in the factory. Regard shall also be had to the fact that sufficient labour strength will always be available for the works aforesaid taking into account; weekly off, holidays, leave and absenteeism without permission. The union and the workmen will extend their fullest co-operation and shall see that the same is implemented. The management will also extend its co-operation to achieve this objective.

11. On 1 October 1957 there was agreement between the parties. The relevant part of the agreement recites thus:

Clause 1: Both the parties will implement their respective obligations under the five-year agreement dated 22 September 1955, particularly Clause 20(b) of the agreement by the union.

* * * Clause 4: It is clearly understood that no further financial liability except those stated in Clauses 2 and 3 is to be borne by the company.

12. On 18 December 1958 there was a further agreement which provided inter alia thus:

This settlement dated 18 December 1958 is a settlement of all disputes upto the date of this agreement and binding both the parties, The union further agrees that they will give their whole-hearted co-operation towards increase of production, maintaining discipline in the factory in seeing that idling of workers during duty hours for matters like breakfast, going to canteen, etc., would be completely discouraged.

As regards the implementation of Clause 20(b) of the agreement dated 22 September 1955 and Clause 1 of the agreement dated 1 October 1957, the union

has assured once again their fullest co-operation to the management in taking effective steps at the earliest.

13. The learned Advocate-General has argued that the agreements of 1957 and 1958 must be deemed to have embodied in themselves the agreement reached on matters set out in Clause 20(b) of the agreement dated 22 September 1955. For convenience I would refer to these agreements as the first, second and third agreements. The effect of these agreements has to be appraised with reference to the amended definition of "settlement" as defined in Section 2(p) of the industrial Disputes Act, 1947, by the amending Act XVIII of 1957, which came into force on 19 March 1957. The original and the amended definition may be set out in Juxtaposition:

Original definition	Amended definition	"Settlement"	"Settlement" means a
means a settle-	settlement arrived at	ment arrived at	in the course of concili-
in the course of	ation proceedings and	conciliation pro-	cludes a written agree-
ceeding."	reement between the employer and	workmen arrived at	otherwise
than in the course of	conciliation proceed-	ing where such agree	ment has
been signed by the parties thereto	in such manner as may be prescribed	and	a copy thereof has been
Bent to appropriate Government	and the conciliation	officer.	

14. It is at once seen that the amendment has given an enlarged definition of the settlement by including a written agreement between the employer and the workmen arrived at otherwise than in the course of a conciliation proceeding. The first agreement was prior to this enlarged definition, and manifestly would not be a settlement under the Act of matters which were referred for adjudication by the then industrial tribunal of Hyderabad.

15. A recent decision of my learned brother, Basi Reddi, J., in W. P. No. 274 of 1960 pronounced on 13 September 1960 1960 I L.L.J. 33 dealt with the binding nature of an agreement reached between the parties on 14 September 1955. The learned Judge expressed the view that the binding nature thereof did not depend upon the provisions of the Industrial Disputes Act but on the general law. It does not appear that this view was challenged in the appeal filed against the decision of my learned brother, W.A. No. 69 of 1960--the Sirpur Paper Mills, Ltd. Vs. Industrial Tribunal and Others, I am in respectful agreement with the said view. In the said view it is manifest that any settlement in respect of matters in 1955 between the parties inter se could not be binding with in the machinery of the industrial Disputes Act.

16. Now the question arises as to what is the effect of the references to the clauses in the first agreement in the second and third agreements. It has been contended by the learned Advocate-General that the parties must be deemed to have incorporated the terms of the first agreement by reference thereto. The explanation offered for not setting out the terms afresh is that it was merely to obviate a repetition and the reference thereto was as good as expressing them

as each in the fresh agreements. Be it noted that the learned Advocate-General has said that the second and third agreements were fresh agreements individually. The relevant extracts from the second and third agreements have been set out by me in extenso. It seems to me that any agreement must ex facie embody the terms which may be ascertained with Judicial certitude and may not be left vague by references to an agreement which has no binding force within the framework of the Industrial Disputes Act. We are concerned mainly with the adjudication of the disputes within the framework of that Act and by the machinery expressly provided therein. I am not convinced that the fresh agreements of 1957 and 1958 could be read as embodying the terms of the first agreement. The explanation seems to me rather laboured and fortuitous.

17. I am not therefore satisfied that the agreements of 1957 and 1958 cover the matters now under reference to the industrial tribunal.

18. There remains to be considered only whether Clause 4 of the agreement of 1957 could be understood as referring to bonus. The industrial tribunal has decided this as preliminary issue 3 rejecting that it related to the payment of bonus. The finding seems to be quite reasonable. The industrial tribunal has also decided issue 7 raised before it with regard to the binding nature of the agreements against the petitioner. On a perusal of the agreements and for the reasons stated supra I am not persuaded that that is not a reasonable conclusion which was arrived at on a perusal of the relevant material.

19. The main theme of the petitioner has been that the matters referred for adjudication by the industrial tribunal were covered by the Agreements referred to; and for that reason the tribunal was precluded from going into the merits of the disputes now raised and giving its decision thereon. After a careful perusal of these documents it appears to me clear that these were not covered by those agreements relied on by the petitioner. I am unable to say that the tribunal is precluded from adjudicating the disputes referred to it by the State under the Industrial Disputes Act and that in so doing the tribunal was acting without jurisdiction.

20. The learned Advocate-General has drawn my attention to the summing up paragraph of the tribunal's order which is in these words:

The interpretation of the agreements referred to will be finally decided after evidence is recorded for the reasons already adverted to above at length.

21. The learned Advocate-General has sought to infer from this rendering in the summing up portion that the learned industrial tribunal had not in fact interpreted the agreements but had postponed his decision thereon and that this Court might be pleased to direct that the preliminary issues raised as ousting the jurisdiction of the said tribunal shall be gone into before adduction of evidence which involves an amount of delay and expense unreasonable in the circumstances.

22. Sri Jayachandra Reddi has relied on the findings on the specific issues 3 and 7 as leaving no doubt as to the decision of the matters on the preliminary issues which are not being canvassed before this Court. It seems to me that at the most it may be an inapt expression of the conclusion arrived at by the tribunal, as the particular matters were covered by the findings expressly stated by the tribunal in his order. I am not therefore impressed by the argument that the learned tribunal did not decide on the binding nature of the agreements relied on by the workers' union before it. On a scrutiny I am satisfied that the findings recorded are not open to any exception on the material placed. I am not persuaded that this is a fit case for interference by certiorari.

23. No other points are raised before me.

24. The writ petition fails and is dismissed with costs of the respondent 2; advocate's fees; Rs. 100.