
(1960) 11 AP CK 0010
In the Andhra Pradesh High Court

Sirpur Paper Mills, Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 22-11-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 7, 7A

Citation : (1961) 1 LLJ 561

Hon'ble Judges : Chandra Reddi, C.J;Chandrasekhara Sastri, J

Bench : Division Bench

Judgement

Chandra Reddi, C.J.—This appeal is directed against the judgment of Basi Reddi, J., dismissing a petition for the issue of a writ of certiorari to quash the determination of the Industrial Tribunal, Hyderabad.

2. The workers of Sirpur Paper Mills, Ltd., which is situate in the State of Andhra Pradesh, raised a dispute with regard to contract labour employed by the company for certain purposes. The workmen demanded that the contract system of labour should be abolished and that these labourers should be absorbed on permanent basis. They also wanted revision of grades and enhancement of deafness allowance. The refusal of the company to comply with these demands led to a dispute between the employers and the employees.

3. To resolve this, the Government of Andhra Pradesh, in exercise of the powers conferred on them by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred for the adjudication of the industrial tribunal, an industrial dispute existing between the workmen and employers of the company. The matters specified in the annexre to that order were:

(i) revision of grades,

(ii) revision of dearness allowance, and

(iii) abolition of contract system of labour and absorption of the present workers on permanent basis.

4. When the matter was taken up by the tribunal, various objections contesting the jurisdiction of the tribunal to decide the points of difference between the employers and the employees were raised on behalf of the company. None of the objections prevailed with the tribunal. On the question relating to contract labour, the tribunal deferred adjudication till after the evidence bearing on the controversy was recorded and its effect considered but the tribunal ruled that notwithstanding the fact that contract workers were not the employees of the Sirpur Mills, Ltd., the union of the employees of the Sirpur Paper Mills, Ltd., and Sirsilk, Ltd., was entitled to represent them provided that they are shown to have a direct and substantial interest in the matter by evidence.

5. In the writ petition filed by the Sirpur Paper Mills, Ltd., the view of the tribunal as to jurisdiction to adjudicate upon the third matter, namely, abolition of contract system of labour and absorption of the present workers on permanent basis, was canvassed.

6. In support of the petition, three points were urged by the learned Advocate-General, the chief of which was that contract labourers were not workmen within the meaning of Clause (s) of Section 2 of the Industrial Disputes Act as they were engaged by and/or under the control of contractors and there was no direct relationship of master and servant between such workmen and the company; and (ii) the employees of the appellant could not take up the cause of contract labourers and raise an industrial dispute with regard to them, as there was no direct or substantial interest between the said workmen and the contract labourers. We are unconcerned with the other contentions raised before the learned Judge, or it is not repeated before us In this appeal.

7. The learned Judge did not give effect to any of the submissions made by the learned Advocate-General with the result that the petition was dismissed.

8. The main contention pressed upon us in this appeal filed against that judgment is that since the dispute does not relate to matters contemplated by the relevant provisions of the statute, the tribunal was not possessed of jurisdiction to deal with it. It is urged by the learned Advocate-General that it is only the dispute in the contemplation of the Schedules II and III that could be referred to the industrial tribunal and as this matter falls outside those two schedules, the tribunal could not take cognizance of it.

9. As the answer to this contention has to be furnished with reference to statutory provisions, we must extract the relevant provisions of the Industrial Disputes Act.

10. Section 2(k) defines "industrial dispute." It means:

any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, of any person.

11. The two sections that empower the Government to constitute labour courts and tribunals are Sections 7 and 7A.

12. Section 7 in so far as it is relevant for the present enquiry is in these words:

(1) The appropriate Government may, by notification in the official gazette, constitute one or more labour courts for the adjudication of Industrial disputes relating to any matter specified in Schedule II, and for performing such other functions as may be assigned to them under this Act.

* * *

Section 7A, omitting the unnecessary portions reads:

(1) The appropriate Government may, by modification in the official gazette, constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matter whether specified in Schedule II or Schedule III.

* * *

13. It is appropriate to read here Schedules II and III which catalogue the matters that could be adjudicated upon by the labour courts and the industrial tribunals.

14. Matters within the jurisdiction of labour courts are:

(1) The propriety or legality of an order passed by employer under the standing orders.

(2) The application and interpretation of standing orders.

(3) Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.

(4) Withdrawal of any customary concession or privilege.

(5) Illegality or otherwise of a strike or lockout.

(6) All matters other than those specified in Schedule III.

15. Matters within the jurisdiction of industrial tribunal are:

(1) Wages, including the period and mode of payment.

(2) Compensatory and other allowance.

(3) Hours of work and rest intervals.

(4) Leave with wages and holidays.

(5) Bonus, profit sharing, provident fund and gratuity.

(6) Shift working otherwise than in accordance with standing orders.

(7) Classification by grades.

(8) Rules of discipline.

(9) Rationalization.

(10) Retrenchment of workmen and closure of establishment.

(11) Any other matter that may be prescribed.

16. We will now come to Section 10 which confers jurisdiction on the proper Government to make reference of disputes to boards, courts or tribunals for adjudication. Section 10 omitting the portions not relevant for the present enquiry, is in these words:

(10) (1) where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing;

* * * (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in Schedule II, to a labour court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in Schedule II or Schedule III to a tribunal for adjudication:

Provided that where the dispute relates to any matter specified in Schedule III and is not likely to affect more than one hundred workmen the appropriate Government may, if it so thinks fit, make the reference to a labour court under Clause (c).

17. It is plain from Sections 7 and 7A that while the jurisdiction of labour court is limited to matters enumerated in Schedule II, wider jurisdiction is conferred on the tribunal. Matters envisaged in both the schedules (Schedules I and II) fall within the jurisdiction of the Industrial tribunal.

18. The first question that arises for consideration in this appeal is whether the present dispute is an industrial dispute within the connotations of Section 2(k) of the Industrial Disputes Act. That this answers the description of an industrial dispute is beyond the pale of controversy since the three conditions of that definition are satisfied. There is a real and substantial dispute and the employers and the employees are parties to the dispute. It cannot also be contested that the present dispute is connected with the "employment or non-employment or the terms of employment of labour, of any person" and thus it falls within the latter part of the definition in Section 2(k). The learned Advocate-General concedes that this definition has been fulfilled, especially having regard to *Standard Vacuum Refining Co. v. their workmen* 1960 II LL.J. 233 .

19. In that case, a similar challenge was made to the reference made by the Government of Bombay u/s 10 of the Industrial Disputes Act as regards the dispute relating to contract labour. As in the present case, the workmen there demanded of the oil-company to abolish the contract labour system prevailing in

the company and absorb them into regular service. The refusal of the company to give effect to this demand resulted in a dispute which ultimately the Government referred to the Industrial Tribunal, Bombay, for decision of the dispute.

20. The objection that the performance was incompetent for the reason that it was not within the competence of the tribunal to entertain it since the workmen were unconcerned with the contract labour, did not find favour with the tribunal.

21. In the appeal before the Supreme Court by special leave, the same objection was repeated, namely, that the dispute was not an "Industrial dispute" and therefore the reference was incompetent and that the tribunal was not justified in interfering with the management function as to how it should get its work done.

22. Their lordships negated both the contentions in the view that there was a real and substantial dispute, that the employers and the employees being parties to the dispute the second requirement was satisfied and that, lastly, there was community of interest in the subject-matter of dispute because the interests of the class to which the workmen belonged were substantially affected, and consequently it was within the powers of the tribunal to adjudicate upon the question as to the abolition of contract labour and absorption of this labour into regular service. In dealing with this topic, this is what Wanchoo, J., who spoke for the Court, remarked:

It seems to us therefore that the respondents have a community of interest with the workmen of Ramji Gordhan & Company, who are in effect working for the same employer. They have also a substantial interest in the subject-matter of the dispute in the sense that the class to which they belong "namely, workmen" is substantially affected thereby. Finally, the company can give relief in the matter. We are therefore of opinion that all the ingredients of Section 2(k) as interpreted in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, are present in this case and the dispute between the parties is an industrial dispute and the reference was competent

23. After this binding authority, it cannot be contended that the employees of an Industry could not raise a dispute which does not directly concern them. This pronouncement furnishes the answer to the question posed by the learned Advocate-General.

24. All the same, it is urged by the learned Advocate-General that the mere existence of an Industrial dispute does not enable the tribunal to entertain such a dispute and that there should be another ingredient before it could take cognizance of the dispute, namely, that it should relate to any of the matters specified by Schedules II and III. If the dispute is outside the ambit of these two schedules, it is not within the jurisdiction of the tribunal to take cognizance of it, contends the learned Advocate-General. Although *Standard Vacuum Refining Co. v. their workmen* 1960 II L.L.J. 233 is on all fours with the case on hand and

affords an effective answer to the points raised by the learned Advocate-General he urges that this ruling did not deal with Sections 7 and 7A and the two schedules. We feel that the absence of discussion bearing on Sections 7 and 7A and the two schedules in the judgment does not make any material difference. Considerations relating to statutory provisions must have been present in their lordships' minds. Presumably, the counsel concerned did not raise this question because there could have been only one answer to it, namely, that such a dispute would fall within the sweep of the two schedules.

25. However, as the learned Advocate-General advanced an argument based on Sections 7 and 7A and Schedule II, we have to deal with it. The point presented by him is that while a reference could be made to labour courts to deal with matters envisaged by Schedule II, the industrial tribunal is invested with authority to adjudicate upon any of the matters set out in the two schedules and that neither of the two schedules makes any reference to a dispute of the description involved in this appeal. We are unable to accede to the proposition advanced by the learned Advocate-General. We feel that the residuary entry in Schedule II, namely, entry 6, is of wide amplitude and comprehends within its scope disputes of the present nature. That item confers powers on labour courts or tribunals to which reference (sic) to them provided it is an industrial dispute within the reach of Section 2(k) of the Act. It does not in any way delimit the jurisdiction of the labour court or the industrial tribunal. We feel that it covers all matters that are appropriate in the context of an industrial dispute. If the dispute bears on the "employment or non-employment or the terms of employment or with the conditions of labour, of any person," it attracts item 6 of Schedule II. We have already remarked that the jurisdiction of an industrial tribunal is extended to matters indicated in Schedule II. It follows that adjudication; of the present dispute could be made by an industrial tribunal by virtue of entry 6 of Schedule II. We are further inclined to the view that entries 1 to 5 have a bearing on the present dispute. As observed by our learned brother, the point referred for the adjudication of the tribunal by the Government is

a compendious way of saving: that the issue referred relates to their wages, compensatory and other allowances, leave with wages, and holidays bonus, profit-sharing, provident fund, gratuity, etc.

Hence, the relevant entries in Schedule III also empower the Industrial tribunal to pronounce upon the matter referred to it by the Government. If so, it was quite competent for the Government to make a reference as respects the abolition of contract system of labour and absorption of the present workers on permanent basis and consequently the concerned tribunal had jurisdiction to entertain and decide the dispute. It follows that the order under appeal could not be successfully Impeached by the appellant.

26. In the result, the appeal falls and is dismissed with costs. As the Government did not oppose the appeal, costs will be awarded only to the contesting respondent, i.e., the respondent 2. Advocates fee is fixed at Rs. 250.