
(1960) 09 AP CK 0006
In the Andhra Pradesh High Court

Sirpur Paper Mills Ltd.

APPELLANT

Vs

Industrial Tribunal

RESPONDENT

Date of Decision : 13-09-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 18, 19, 2, 7A

Citation : (1961) 1 LLJ 33

Hon'ble Judges : Basi Reddi, J

Bench : Single Bench

Judgement

Basi Reddi, J.—The petitioner is the Sirpur Paper Mills, Ltd. This is a petition under Article 226 of the Constitution for the issue of a writ of certiorari or any other appropriate writ to quash the order dated 1 April 1960 passed by the industrial Tribunal, Hyderabad, in Miscellaneous Petition No. 27 of 1959 in industrial Dispute No. 1 of 1959.

2. In exercise of the powers conferred by Clause (d) of Sub-section (1) of the industrial Disputes Act, 1947, the Government of Andhra Pradesh, by their order dated 4 April 1959, referred for adjudication to the industrial Tribunal, Hyderabad, an industrial dispute existing between the workmen and employers of the Sirpur Paper Mills, Ltd., in respect of the matters specified in the annexure to the said order. The annexure ran as follows:

How far the following demands are tenable?:

- (1) Revision of grades.
- (2) Revision of dearness allowance.
- (3) Abolition of contract system of labour and absorption of the present workers on permanent basis.

Pursuant to the above reference, the industrial tribunal registered the dispute as Industrial Dispute No. 1 of 1959. Even at the threshold the petitioner presented a

petition raising various objections contesting the Jurisdiction of the tribunal to adjudicate upon the points of dispute referred to it by the State Government. This petition was numbered as Miscellaneous Petition No. 27 of 1959 and was disposed of by an order dated 1 April 1960, which is challenged in this writ petition. As many as 17 grounds of objection were raised by the petitioner but all of them were overruled by the tribunal save with regard to one point, viz., the absorption of contract labour. On that point the tribunal deferred its decision till after evidence bearing on the question had been recorded and the effect of an agreement dated 19 January 1956 had been considered.

3. In this writ petition, the learned Advocate-General, appearing for the petitioner, has not seriously challenged the correctness of the finding of the tribunal that it has jurisdiction to adjudicate upon two of the three matters referred to it by the State Government, viz., revision of grades and revision of dearness allowance. He has, however, questioned the jurisdiction of the tribunal to adjudicate on the third matter referred to it by the Government, viz., abolition of contract system of labour and absorption of the present workers on permanent basis. Reformulated his points as follows:

(1) Contract labourers are not workmen within the meaning of Clause (s) of Section 2 of the industrial Disputes Act as they are engaged by and are under the control of contractors and there is no direct relationship of master and servant between such workmen and the petitioner ; nor can the workmen who are employed by the petitioner take up the cause of the contract labourers and raise an industrial dispute with regard to them as there is no direct or substantial interest between the said workmen and the contract labourers.

(2) Inasmuch as the agreement reached between the management of the Sirpur Paper Mills, Ltd., and the workmen of the company on 14 September 1955 is still subsisting and operative by reason of an express term in the agreement that it was to enure for a period of five years except as otherwise stipulated, the workmen are debarred from raising a dispute as regards the absorption of contract labour.

In this connexion, strong reliance is placed on Clauses 3 and 7 of the said agreement. Clause 3 provides:

The management thinks that the entire work of the company including the works that are now being done by or through contractors and their workmen can be attended to and done efficiently and within the prescribed normal working hours of the factory by the permanent workmen on the company's musters as on 1 September 1955. In determining the strength of each department regard should be had to the fact that the total labour strength shall not exceed the number as on 1 September 1955 on the company's musters as referred to above, and sufficient labour shall be drawn from different departments to carry outworks that are now being done with contract labour. Further in assessing such departmental strength provision will be made for weekly off, holidays, leave and

absenteeism without permission. The workmen and union shall extend their fullest co-operation and will see that the same is implemented. The management will also extend its co-operation to achieve this objective. Clause 7 runs thus:

The management will not retrench any of the existing workers in the service of the company as on 1 September 1955. The above will not apply to any contractor's labour or labour employed through contractors to carry out any kind of jobs including contracted jobs or temporary labour taken through contractors.

It is contended by the learned Advocate-General that the effect of these two clauses in the agreement is that the workman had no interest in or concern with contract labour, but on the contrary they undertook to eliminate contract labour by putting in extra effort and doing all the work themselves. He further contends that Clause (7) makes it abundantly clear that the undertaking given by the management, that they would not retrench any of the existing workers in the service of the company, did not apply to contract labour.

(3) The absorption of contract labour is not one of the matters specified in Schedule II or III to the Act and, therefore, the industrial tribunal has no jurisdiction to adjudicate upon that matter.

4. On the first point, the industrial tribunal has recorded the following finding in Para. 8 of its order:

in my opinion an industrial dispute can be raised by workmen on behalf of any person even if such person or persons are not workmen, provided that the workmen who raised the dispute have a direct and substantial interest in the matter. This was decided by the Supreme Court in *Dimakuchi Tea Estate case* 1958 1 L.L.J. 500. Here the contention is that the contract labour has been used in the regular processes of both the mills for years together but they are not given the same rights and benefits to which regular workmen are entitled by the expedient of recruiting them through a contractor. These are Questions of fact; I can decide them only when evidence is led; but, as far as the law is concerned, I am of the opinion that even if the contract workers are not the employees of the employer of the Sirpur Paper Mills or Sirsilk, Ltd., still, the union of these two mills is entitled to represent them provided that they are shown to have a direct and substantial interest by evidence. This disposes of the objection in Para. 13 also which is to the effect that the contract labour not being the workers of the employer, no industrial dispute can be raised in respect of them.

5. In my opinion, the view of the industrial tribunal on this point is correct. The expression "industrial dispute" is defined in Clause (k) of Section 2 of the Act and so far as it is material for the present purpose, an "industrial dispute" means any dispute or difference between employers 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. The connotation of the expression "any person" was explained in the following manner by their lordships of the Supreme Court in *Achutha Achar Vs. Sharada Jewellery Mart and Another*, at 513:

Having regard to the scheme and objects of the Act, and its other provisions, the expression "any person" in Section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are:

(1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and

(2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or a substantial interest.

In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

6. Can it be said in the present case that the workmen of the Sirpur Paper Mills, Ltd., have no direct or substantial interest in the employment, non-employment, terms of employment or conditions of labour of the contract labourers? it is the case of the workmen that these contract labourers have been working in this establishment for periods ranging from one year to ten years, that they do the same kind of work as is done by the permanent workmen and their work is directly supervised by the employers, and that the employers have purposely branded these workers as contract workers with a view to deprive them of all the benefits given to permanent workers under various labour laws. It is common ground that though the contract labourers have a separate union of their own, the office-bearers of that union and the union of the permanent workmen, are common. In these circumstances, it cannot be said that the workmen of the mills have no direct or substantial interest in the contract labourers. Further it can scarcely be gainsaid that the dispute with regard to contract labour is capable of adjudication and that the employers can give the relief asked for.

7. Turning to the third point taken by the learned Advocate-General, namely, that the tribunal has no jurisdiction to deal with the question of the absorption of contract labour since it is not one of the matters specified in Schedule II or III, I see no force in this contention. By Section 7A of the Act, the appropriate Government is empowered to constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matter whether specified in Schedule II or III, u/s 10(1)(d) of the Act, where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may 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 III, to a tribunal for adjudication. Sub-section (4) of Section 10 says that where in an order referring an industrial dispute to a tribunal, the appropriate Government has specified the points of dispute for adjudication, the tribunal shall confine its adjudication to those points and matters incidental thereto. It is true that neither in Schedule III which deals with matters within the ordinary jurisdiction of industrial tribunals nor in Schedule II which deals with matters within the ordinary jurisdiction of labour courts, is the subject of absorption of contract labour on permanent basis mentioned in terms. But item (6) in Schedule II speaks of "all matters other than those specified in Schedule III" and that in my opinion would take in the question of the absorption of contract labour. A tribunal constituted u/s 7A of the Act has the power to deal with any matter specified in Schedule II or III while Section 10(1)(d) empowers the Government to refer a dispute or any matter appearing to be connected with or relevant to, the dispute relating to any matter specified in Schedule II or III to a tribunal for adjudication. That is what the State Government has done in the present case. Moreover the point that has been referred for adjudication by the Government is the abolition of contract system of labour and absorption of the present workers on permanent basis. It seems to me that this is merely a compendious way of saying that the issue referred relates to their wages, compensatory and other allowances, leave with wages and holidays, bonus, profit-sharing, provident fund, gratuity, etc., which are all matters specified in Schedule III. In either view the industrial tribunal has jurisdiction to adjudicate upon the matter.

8. There remains the second point raised by the learned Advocate-General, namely, that during the subsistence of the 1955 agreement, it is not open to the workmen to raise a dispute with regard to contract labour. It is to be mentioned here that there appears to have been a misapprehension before the industrial tribunal as to the true character of the agreement. It appears to have been assumed that the agreement was a "settlement" as envisaged by Section 18 of the Act. But this ignores the fact that Section 18 was amended by the Amendment Act No. XXXVI of 1956 which came into force on 28 August 1958. The agreement in question was entered into on 14 September 1955. Before the amendment Section 18 ran thus:

A settlement arrived at in the course of conciliation proceedings under this Act or an award which has become enforceable shall be binding on-

(a) all parties to the industrial dispute," etc.

Similarly, Section 19 as it stood before the amendment and which deals with the period of operation of settlements and awards, referred only to a settlement arrived at in the course of a conciliation proceeding under the Act. Admittedly the 1955 settlement in the present case was not one arrived at in the course of conciliation proceedings. After the amendment, however, a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings, is placed on the same footing as a settlement arrived

at in the course of conciliation proceedings for purposes of Sections 18 and 19 of the Act. It follows, therefore, that the binding nature of the agreement reached between the parties on 14 September 1955 does not depend on the provisions of the industrial Disputes Act but on the general law.

9. The industrial tribunal in Para. 9 of its order has expressly reserved its decision on the question whether it has jurisdiction to adjudicate upon the third issue referred to it by the Government, viz., absorption of contract labour. The tribunal was certainly entitled to do that. In considering that question, the tribunal will no doubt take into account all relevant circumstances and will proceed to adjudicate on that issue only if it finds that it has jurisdiction with regard to it.

10. It follows that there is no error in the order of the tribunal which calls for review by certiorari. It is well recognized that certiorari may be obtained on the ground of a defect in the jurisdiction of the court or tribunal below or of a breach of the rules of natural justice in its proceedings, or an error of law on the face of the proceedings. In the present case none of the conditions for the issue of a writ in the nature of certiorari exists. The writ petition therefore fails and is dismissed with costs of the respondent 2. Advocate's fee Rs. 100.