

(1953) 10 KL CK 0014
In the High Court Of Kerala
Case No : A.S. No. 86 of 1953

South Travancore Electrical Workers Union	APPELLANT
Vs	
Nagercoil Electric Supply Corporation and Others	RESPONDENT

Date of Decision : 27-10-1953

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7
Industrial Disputes Act, 1947 — Section 15, 17, 17A, 17A(1), 2
Industrial Disputes Order, 1951 — Article 10

Citation : (1953) 10 KL CK 0014

Hon'ble Judges : Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : M. Ramanatha Pillai, for the Appellant; N. Varadraja Iyengar and T.N. Subramonia Iyer, General, for the Respondent

Judgement

M.S. Menon, J.—This is an appeal from the order of Subramonia Iyer, J., in O. P. No. 15 of 1952 granting the Petitioner's prayer for a writ of certiorari quashing the Interim Award passed by the Industrial Tribunal, Trivadrur, in Industrial Dispute No. 13 of 1951, on the ground that it is in excess of jurisdiction and contains an error apparent on the face of the record. We have carefully considered the Award in the light of the observations of the learned Judge and have come to the conclusion that no infirmity vitiates the Award and that this appeal has to be allowed.

2. The following chronological narrative details the events that led up to the Interim Award:

28-4-1951: Retrenchment of 14 workmen.

2-5-1951: Dismissal of 14 more workmen.

9-6-1951: Conference attended by the Chief Minister and Ors. at which the following resolutions were recorded:

(1) It was agreed that the total number of workers required for the efficient working of the Nagercoil Electric Supply Corporation be decided by the Chief Engineer (Electricity). The number of people required in the various sections of the Corporation will also be decided by the Chief Engineer (Electricity).

(2) Actual retrenchment if it is ultimately found to be necessary will be effected by the management in consultation with the Labour Commissioner, or Assistant Labour Commissioner.

(3) Till retrenchment if found necessary is given effect to, the 14 workers retrenched as well as 14 workers dismissed will be paid their wages by the employer from the date of their retrenchment or dismissal as the case may be. The arrears will be paid on or before 12th June 1951.

(4) The Union agrees to call off the strike, satyagraha and other demonstrations started by them in this connection.

16-6-1951: Report of the Chief Engineer (Electricity) the relevant portion of which reads" as follows:

The work connected with the electric supply in Nagercoil comprises of operation of the Powerhouse for about 3 hours daily, maintenance of the distribution system, service to consumers, meter reading and billing for the energy consumed. There is practically very little new construction work and all that the Licensee has to carry out is maintenance of the existing system. For this purpose, the staff employed by him as shown in Statement I is more than ample and I do not consider that there is any scope for providing employment for more staff. The retrenchment proposed by him was therefore quite in order though the method adopted is quite irregular. I have made a comparison of the number of people engaged by him with the Government owned distribution systems of similar size, and I am quite satisfied that the staff employed by him at present is quite sufficient for maintaining the system very efficiently.

I may however remark in this connection that the method adopted by the Licensee for retrenching is not in conformity with any accepted principles. If statement II is perused, it will be seen that he has retrenched several people who have had long service while he has retained persons with comparatively short period of service. At the time of retrenchment, proper explanation has been given for retrenching persons with long service, and therefore the grievances of the strikers appear to be genuine as far as this aspect is concerned. This is a matter for the Labour Commissioner to go into and he may be given instructions to take suitable action.

14-8-1951: Reference of the following issues for adjudication by the Government of Travancore Cochin (Industrial Dispute No. 13 of 1951):

(1) Who are the workers that are to be retrenched from the Nagercoil Electric Supply Corporation, as per the decision of the Chief Engineer, Electricity?

(2) Whether any gratuity and other benefits are to be granted to the workers on the termination of their services? If so, what they should be?

(3) Whether any arrear wages should be given to the retrenched, discharged or dismissed workers?

27-12-1951: The Interim Award in Industrial Dispute No. 13 of 1951 (Travancore-Cochin Government Gazette dated 29-1-1952, Part I, p. 86) the relevant portion of which reads as follows:

I hold that the management has to pay the wages with arrears to the twenty-eight workers who are either retrenched or dismissed and has to find issue No. 3 in favour of the Union. It is admitted by both sides that the management has paid a portion of the arrears of wages to the workers. The management will pay to the twenty-eight workers the wages remaining unpaid and continue to pay it till retrenchment if found necessary is given effect to, (paragraph 8).

3. The judgment under appeal is apparently based on the assumption that the Tribunal has made two mistakes:

(a) Misunderstood the scope of issue No. 3 as being the same as that of resolution No. 3; and

(b) Considered the question as to whether any reduction in personnel was necessary as still open in spite of the report of the Chief Engineer (Electricity) to the effect that the strength at the time of the report was adequate and sufficient.

We cannot agree. All that the Tribunal has done is to take the view-which it was entitled to take-that until it came to the conclusion that the twenty-eight workmen discharged by the employer were the workmen to be actually retrenched in pursuance of the report of the Chief Engineer (Electricity) and according to the canons of Industrial Law based on the length of service and other such relevant considerations, the question as to whether all or any of the twenty-eight workmen was to be retrenched or not was an open question, and interim relief should be awarded on that basis.

4. The words "till the retrenchment if found necessary is given effect to" in the passage from the Award which we have extracted above does not mean as Subramonia Iyer, J., seems to have thought "till the question whether there should be any reduction in personnel is decided", but "till the retrenchment of all or any of the twenty-eight workmen if found necessary is given effect to", and the reference by the Tribunal to resolution No. 3 in dealing with issue No. 3 was only to place the dispute against its proper background and to meet the contention of the employer that interim relief was precluded by the wording of that resolution. As we understand the Award the approach of the Tribunal has been nothing but proper and its conclusion well within the ambit of the three issues referred.

5. Subramonia Iyer, J., appears to have entertained some doubts as to whether

an appeal would lie from the Interim Award under dispute. There can be no doubt that an appeal was competent and in the light of Section 2(b) of the Industrial Disputes Act, 1947, and Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the matter should be considered as clearly beyond controversy - "Punjab National Bank Ltd. v. A.N. Sen" AIR 1952 Punj 134 (A).

6. Section 2(b) of the Industrial Disputes Act, 1947 defines the expression "Award" as follows:

award means an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto

and Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950 provides:

subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if-

- (a) the appeal involves any substantial question of law; or
- (b) the award or decision in respect of any of the following matters, namely:
 - (i) wages,
 - (ii) bonus or travelling allowance,
 - (iii) any contribution paid or payable by the employer to any pension fund or provident fund,
 - (iv) any sum paid or payable to, or on behalf of, the workman to defray special expenses entailed on him by the nature of his employment,
 - (v) gratuity payable on discharge,
 - (vi) classification by grades,
 - (vii) retrenchment of workmen,
 - (viii) any other matter which may be prescribed.

7. The only other argument, apart from those indicated above, which was advanced before us was that the period of a week specified for the payment of arrears in the concluding paragraph of the award which is extracted below violates the provisions of Section 17A, Industrial Disputes Act, 1947, and that the violation vitiates the whole Award and makes it inoperative:

In the result I pass this Interim Award ordering the management to pay the arrears within a week from the date of publication of the Award in the Gazette, as specified above and this will be in effect till Final Award is passed. I submit this Award to Government u/s 15 of the Industrial Disputes Act (Central Act XIV) of 1947.

The argument is summarised as follows in the judgment under appeal:

It is also contended that viewed as an Award u/s 15 of the Act, as the Interim Award purports to fix a period of a week from the date of its publication for its coming into force, it violates the provisions of the Act as regards the coming into operation of Awards u/s 15, as u/s 17A, an award shall become enforceable only on the expiry of 30 days from the date of its publication in the Gazette. The fixation of the period of 7 days, from the date of publication for its coming into force, it is contended, as an inseparable part of the Award and therefore the fixation of time- being "ultra vires", the entire award is vitiated.

It proceeds on a misunderstanding of Section 17A(1):

The award of a Tribunal shall become enforceable on the expiry of thirty days from the date of its publication u/s 17....

and the non-recognition of the distinction between

(a) the date on which an award becomes enforceable, and

(b) the date when it comes into operation.

8. The law on the subject is correctly summarised in Haldar's Indian Law of Industrial Disputes p. 149:

Although normally the date of enforceability and the date of operation may be identical, yet there may be cases where these two dates may be different. The date from when the award of a Tribunal shall be "operative" is the date specifically mentioned as such in the award itself. The date of "enforceability" of the award of a Tribunal is the date which comes on the expiry of 30 days from the date of its publication u/s 17A simple illustration will make this point clear. If an award specifically mentions that it is to come into operation on 10-11-1950, then that date is the date from which the award becomes operative. If the award is published on 15-11-1950, it will be enforceable on 16-12-1950. The enforceable date in this case is not the same as the date of operation of the award. The two dates are different.

The directives given in the award, though operative, will not be enforceable except from 16-12-1950, and when it becomes enforceable then all the directions in the award will have to be implemented from the date of its operativeness, viz., 10-11-1950...If, however, it is "not specifically mentioned in the award as to, the date from which the award shall come into operation then the date of operation as well as the enforceable date will be identical, that is to say, the date which falls on the expiry of the 30 days from the date of its publication u/s 17.

In support of his contention the learned Counsel for the Respondent relied on - "R. v. Industrial Disputes Tribunal", 1953-1 All E. R. 593 (B). That case has nothing whatever to do with the point at issue before us. In spite of Article 10 of the Industrial Disputes Order, 1951, which reads:

Where an award on a dispute or issue has been made by the tribunal then as

from the date of the award or from such other date, not being earlier than the date on which the dispute or issue to which the award relates first arose, as the tribunal may direct, it shall be an implied term of the contract between the employer and workers to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award until varied by agreement between the parties or by a subsequent award of the tribunal....

an award was passed increasing wages as from the 23rd November 1951, a date anterior to the date on which the dispute arose.

Lord Goddard, C. J., said that the tribunal had " no jurisdiction to make such an award and:

The earliest date from which they could have awarded the increased rate of wages would have been from the date when the dispute arose. It for the tribunal, no doubt, to determine that date and to have awarded from that date and they should have so awarded. In these circumstances, as we cannot amend it, the award is bad and an order of certiorari must go and it must be quashed.

9. It is settled law that when the remedies for the redress of grievances or the correction of errors are found in a statute which creates new rights and liabilities it is to those remedies and those remedies alone that resort should normally be made, - "Veerappa v. Raman and Raman Ltd.", AIR 1962 SC 192 (C). The Industrial Disputes Act, 1947, and the Industrial Disputes (Appellate Tribunal) Act, 1950, form a self-contained Code with an elaborate and adequate machinery for the composing of industrial disputes and ordinarily the aggrieved party should seek his redress within the framework of those enactments and not in this Court under Article 226 of the Constitution.

In dealing with such matters this Court will also have to remember the words of the learned Chief Justice of India in - State of Madras Vs. C.P. Sarathy and Another,

In view of the increasing complexity of modern life and the interdependence of the various sectors of a planned national economy, it is obviously in the interest of the public that labour disputes should be peacefully and quickly settled within the framework of the Act rather than by resort to methods of direct action which are only too well calculated to disturb the public peace and order and diminish production in the country, and Courts should not be astute to discover formal defects and technical flaws to overthrow such settlements

and the significance of the passage from Julian Huxley quoted with approval in - The Sree Meenakshi Mills Ltd. Vs. The State of Madras and Others, and - Dindigul Skin Merchants' Association and Others Vs. The Industrial Tribunal, Madurai and Others,

Many of our old ideas must be retranslated, so to speak, into a new, language. The democratic idea of freedom, for instance, must lose its nineteenth century

meaning of individual liberty in the economic sphere, and become adjusted to new conceptions of social duties and responsibilities. When a big employer talks about his democratic right to individual freedom, meaning thereby a claim to socially irresponsible control over a huge industrial concern and over the lives of tens of thousands of human beings whom " it happens to employ, is talking in a dying language.

10. The Industrial Tribunals under the Industrial Disputes Act, 1947, are charged with difficult and delicate task and in the interests of industrial peace they should be allowed to discharge their duties without delay or interference. Any employer who feels the urge to move this Court will do well to note that Article 226 of the Constitution is no charter for the preservation of antique concepts of contractual rights in the field of labour relations against the impact of awards which are liberal or legislation which is progressive.

We allow the appeal with costs, advocate's fee Rs, 200/-. The Appellant will also have his costs in O. P. No. 15 of 1952 from the Petitioner therein, advocate's fee Rs. 200/-.