

(1961) 11 CAL CK 0007
In the Calcutta High Court

Sree Type Foundry

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-11-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 12, 13, 17, 20

Citation : (1962) 1 LLJ 715

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The short point which arises for consideration in this rule, is whether a conciliation officer, appointed under the Industrial Disputes Act (hereinafter referred to as the Act), is competent to continue a conciliation proceeding for more than fourteen days after the commencement thereof or whether he must submit his report on conciliation within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government, otherwise lose his jurisdiction to conciliate.

2. Between the petitioner and its workmen there arose an industrial dispute over dismissal of certain workmen and certain demands relating to grade, scale of pay dearness allowance, provident fund, working hours, confirmation in appointments, bonus and other matters, all contained in a charter of demand.

3. On the items of dispute being brought to the notice of the Assistant Labour Commissioner, on various dates in the months of July and August 1958, he directed A.C. Roy Chowdhury, a labour officer, to commence conciliation of the dispute. The said labour officer, by his letter, dated 29 August 1958 (annexure A to the petition), asked the petitioner to attend a joint conference with the workers' association, named the Press Employees' Association, to be held on 9 September 1958. The conference, however, could not be held on the date fixed and by his letter, dated 15 September 1958 (annexure B to the petition), the

labour officer shifted the date of the conference to 22 September 1958. It was found out at the conference held on 22 September 1958, that A.C. Roy Chowdhury was not the proper officer to conciliate in the dispute because the local area within which the dispute arose fell within the territorial jurisdiction of the labour officer, south region. The proceedings were thereupon transferred to B.G. Mukherjee, the appropriate labour officer. This latter officer, by his letter, dated 30 September 1958 (annexure C to the petition), arranged for a joint conference on 3 October 1958 but the petitioner's representative did not attend that conference on the following pretext, as appears in its letter, dated 3 October 1958 (annexure D to the petition), addressed to B.G. Mukherjee, respondent 2:

In this connexion I may point out to you that a Joint conference has already been held by A.C. Roy Chowdhury, labour officer, Government of West Bengal, on 22 September 1958 over the same subject-matter as mentioned in your aforesaid letter and the matter was finally discussed with him. In the circumstances, if you still intend to hold the joint conference, then please let me know.

4. The respondent 2 made further efforts to bring the disputes together in a joint conference, proposed to be held on 2 January 1959, but the petitioner did not attend. Instead thereof, the petitioner moved this Court, under Article 226 of the Constitution, alleging;

(a) that it was clearly incumbent on the conciliation officer to make his report within fourteen days of the commencement of the conciliation proceedings, commenced on 29 August 1958 or alternatively on 15 September 1958 or alternatively at the latest on 30 September 1958 and respondent 2 has in any event no power or authority to purport to continue such alleged conciliation proceedings or to make any report after the expiry of such period of fourteen days as he threatens and intends to do; and

(b) that in any event, respondent 2 having failed to comply with the provisions of Section 12(6) of the Industrial Disputes Act, has lost seisin over the matter.

5. The petitioner prayed for a writ in the nature of mandamus directing the respondents to forbear from continuing the conciliation proceedings and for a writ in the nature of certiorari for quashing the proceedings so far and also for a writ in the nature of prohibition prohibiting the respondents from giving any effect or further effect to the said proceedings and obtained the present rule.

6. In my opinion, the last two prayers made by the petitioner are clearly inappropriate. The powers which conciliation officers exercise and the duties which they discharge are neither judicial nor quasi-judicial. The object of the Industrial Disputes Act is to investigate and settle industrial disputes and in furtherance of that object, provisions have been made for officers, known as conciliation officers, to intervene at the very commencement of disputes and to try all avenues for bringing about an amicable settlement between the disputants. For that purpose they have to make enquiries but the Object of the enquiry is merely to inform themselves of the exact nature of the disputes and

the view-points of the disputants, so that they may better be able to bring them together and evolve a formula for settlement on the greatest common measure of agreement. If a conciliation officer succeeds in effecting a settlement, he reports to the appropriate Government with a memorandum of settlement signed by the parties to the dispute. Even if a conciliation officer fails to effect a settlement of the disputes, even then he has to report to the appropriate Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at. At no stage, is it his duty to adjudicate between the disputing parties. Nor is it his function to decide as to which of the parties is in the right and which in the wrong and even if he forms any opinion in this respect, his views are binding on nobody. That being the position, the powers and duties of a conciliation officer are administrative in nature and the actions taken by him are all administrative actions. In my opinion, it is clearly inappropriate to ask for a writ of certiorari or a writ of prohibition against the acts of a conciliation officer under the Industrial Disputes Act.

7. A writ of prohibition is a prerogative writ directed to an inferior Court or tribunal which forbids such Court or tribunal to continue proceedings therein in excess of its jurisdiction or in contravention of the law of the land. The object of a writ of certiorari is to secure, by the exercise of the authority of a superior Court, that the Jurisdiction of "the inferior tribunal be properly exercised. Neither of these two writs can be invoked for the purpose of interference with administrative actions. The petitioner is thus left with its prayer for issue of a writ of mandamus against the conciliation officer, which would no doubt lie if it can be shown that the conciliation officer contravened the provisions of the Industrial Disputes Act.

8. Turning now to the contention that the conciliation officer contravened the provisions of Section 12(6) of the Industrial Disputes Act by not filing his report within fourteen days of the commencement of the conciliation proceedings and thereafter lost seisin in the matter of conciliation of the dispute, the first question for consideration is when is it that the conciliation proceedings commenced and when did it terminate ? For that purpose I need, first of all, examine the language of Sections 12 and 20 of the Industrial Disputes Act, the material portions of which are set out below:

Section 12(1) * * *

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) * * *

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

(Provided that the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.)

Section 20(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under 8. 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded--

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(6) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published u/s 17, as the case may be; or

(c) when a reference is made to a Court, labour court, tribunal or national tribunal under S. 10 during the pendency Of conciliation proceedings.

(3) * * *

9. In dealing with Section 12 of the Act, Sinha, J. observed in Matter No. 88 of 1953, *Dhirendra Nath Ghosh v. Bird & Co., Ltd.* (unreported) as follows:

It will be seen on the face of these two sub-sections (meaning Sub-sections. (4) and (6) of Section 12) that there is a sort of conflict. Under Sub-section (4), the conciliation officer in case where no settlement has been arrived at, is required to send a full report to the appropriate Government "as soon as practicable after the close of the investigation," whereas under Sub-section (6), a report u/s 12, must be submitted within fourteen days of the commencement of the conciliation proceedings. It may be that the conciliation proceedings extend further than a

fortnight. In that event, what is to happen to the report? According to Hazra after the expiry of fourteen days from the commencement of conciliation proceedings no report u/s 12 can at all be submitted by the conciliation officer. This apparent contradiction between the two sub-sections of Section 12 that I have mentioned above, has been noticed in a case decided by the Labour Appellate Tribunal and reported in *Colliery Mazdoor Congress, Asansol v. New Birbhum Coal Co., Ltd.* 1952 Labour Appeal cases 219 at p. 222. The relevant portion thereof is as follows;

Section 12 defines the duties of conciliation officer. For the purpose of bringing about a settlement between the parties, he is required to begin his investigation without delay. If a settlement of the dispute is arrived at wholly or in part, he is to have the settlement recorded in writing and signed by the parties and forward it to the appropriate Government along with his report. If no settlement is arrived at he is to submit a report to the appropriate Government "as soon as practicable after the close of the proceedings" setting out the details mentioned in Sub-section (4). Then follows Sub-section (6), the terms of which we have quoted above. In our opinion, that subsection has to be taken along with Sub-section (4) and so must be deemed to enjoin that conciliation proceedings are to be carried on with expedition and to be closed within a fortnight of its commencement, if that was possible or practicable. If there is a breach of duty on his part, by not signing the report within fourteen days of the commencement of the conciliation proceedings, the matter is between him and the higher authorities. The conciliation proceedings would not in law, automatically terminate by such failure.

10. In my opinion, the proper interpretation would be that the time-limit imposed by Sub-section (6) of Section 12 is directory and not mandatory. Where public officers are entrusted with the doing of some act within a particular time-limit and if the result of their not acting in accordance therewith causes inconvenience to the public, it is well settled that the provisions enjoining them to do certain acts within a certain period are to be considered as directory and not mandatory. In other words, while public officers should ordinarily be kept within the time-limit, a violation thereof does not render the act illegal. Taken from this viewpoint, it is quite obvious that even in the present case the report had not been made within fourteen days of the commencement of the conciliation proceedings, the proceedings are not by that reason invalid or illegal.

11. The next question is as to whether there had at all been a violation of Sub-section (6). When is it that a conciliation proceeding is to commence? Section 20 of the Act deals with this point, but unfortunately it does not deal with the position that arises when there is a dispute in respect of concerns which are not public utilities and when there is no settlement. Therefore, the point really is at large. Mr. Haldar in his book on the Indian Law Industrial Disputes at p. 139 has suggested that the time should be counted from

when the conciliation officer does an act towards holding conciliation

proceedings, as for example, when he issues a notice to parties fixing the date of the joint conference.

In my opinion, that is a very reasonable interpretation. As I have already said, the duty of a conciliation officer is to settle disputes. Therefore, conciliation proceedings really start from the time when the parties are brought together in order to effect the conciliation. The mere fact that the respective parties make their representations to the officer would not necessarily signify the commencement of conciliation proceedings because it is not until the officer is apprised of the conflicting view-points and actually starts to conciliate them, can it be said that the conciliation proceedings have commenced ? From that point of view, we find that the first time when the parties were brought together to discuss the matter was on 19 August 1953 and from that point of view, the fourteen days had not expired. This point, however, is certainly a debatable one and it might equally be urged that the joint enquiry on 19 June 1952 might also be taken to be the commencement of the conciliation proceedings. I, therefore, prefer to base my decision on the principle adumbrated above, that the provisions of Sub-section (6) of Section 12 are directory and not mandatory.

12. In dealing with Section 20 read with Section 12(6) of the Act, the Supreme Court observed as follows in *Andheri Marol Kurla Bus Service and Another Vs. The State of Bombay*, :

The argument raised on behalf of the appellant is that the object of conciliation is to get a settlement made with expedition and therefore u/s 12, the conciliation officer was bound to make Ms report within fourteen days of the commencement of the conciliation proceedings or within such shorter period fixed by the appropriate Government. From this it was submitted that as fourteen days had expired before 18 March 1952, the dismissal could not be said to be one within the words "pendency of the conciliation proceedings." The Act provides for commencement and conclusion of conciliation proceedings u/s 20 but the first sub-section of Section 20 deals with what are called utility services and Sub-section (2) of that section provides as to when conciliation proceedings conclude. That sub-section is as follows:

Section 20(1) * * *

(2) A conciliation proceeding shall be deemed to have concluded--

(a) where a settlement is arrived at when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the board is published u/s 17, as the case may be; or

(c) when a reference is made to a Court, labour court, tribunal or national tribunal u/s 10 during the pendency of conciliation proceedings.

The provisions of Sub-section 20(2) apply to all conciliation proceedings whether in regard to utility services or otherwise. All conciliation proceedings under this sub-section shall be deemed to have concluded in the case where no settlement is reached, when the report of the conciliation officer is received by the appropriate Government. The conciliation proceedings therefore do not end when the report u/s 13(6) is made by the conciliation officer but when the report is received by the appropriate Government. It was contended that the conciliation proceedings should be held to terminate when the conciliation officer is required u/s 12(6) of the Act to submit his report but the provisions of the Act above quoted do not support this contention as the termination of the conciliation proceedings is deemed to take place when the report is received by the appropriate Government. This is how Section 20(2)(b) was interpreted in *Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery*, .

It was next contended that on this interpretation the conciliation proceedings could be prolonged much beyond what was contemplated by the Act and the termination would depend upon how soon a report is received by the appropriate Government. It is true that Section 12(6) of the Act contemplates the submission of the report by the conciliation officer within fourteen days but that does not affect the pendency of the conciliation proceedings and if for some reason the conciliation officer delays the submission of his report, his action may be reprehensible but that will not affect the interpretation to be put on Section 20(2) (b) of the Act. Section 12 lays down the duties of the conciliation officer. He is required to bring about settlement between the parties and must begin his investigation without delay and if no settlement is arrived at, he is to submit his report to the appropriate Government. No doubt Section 12 contemplates that the report should be made and the proceedings closed within a fortnight and if proceedings are not closed but are carried on, as they were in the present case, or If the conciliation officer does not make MB report within fourteen days, he may be guilty of a breach of duty but in law the proceedings do not automatically come to an end after fourteen days but only terminate as provided in Section 20(2)(6) of the Act [*Colliery Mazdoor Congress, Asansol v. New Beerbhoom Coal Co., Ltd.* 1952 Lab. I.C. 219 . As the conciliation proceedings were pending at the time when Louis Pereira was dismissed, the appellants were rightly convicted u/s 31(1) read with Section 33 of the Act.

13. That being the legal position, even if I hold that the conciliation proceedings must be deemed to have commenced, as contended for by the petitioner, I have still then to hold that the conciliation proceedings did not automatically come to an end within fourteen days after commencement and this is all the more so because the first attempt at conciliation was made by a conciliation officer, who was not the appropriate officer and who left the conciliation because of that. The second conciliation officer also should have closed the proceedings within a fortnight and made his report (at least the best that he could have done under the circumstances), but his failure to do that did not make him functus officio.

14. Sri Prasanta Kumar Ghosh, learned Advocate for the petitioner, tried to distinguish the Judgment delivered by Sinha, J., and also the Judgment of the Supreme Court delivered by Kapur, J., on the ground that the aforesaid two decisions interpreted Section 12(6) of the Act without the proviso which was added to the sub-section by the amending Act 36 of 1956. He contended that the proviso provided for the only circumstance under which the period fixed for submission of a report could be extended; otherwise the provision as to time in Section 12(6) must be treated as mandatory. In my opinion Sri Ghosh is not correct in his contention. The proper function of a proviso is, as the Supreme Court observed in *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, that:

it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment,

15. The proper interpretation of Sub-section (6) of Section 12 read with the proviso is to read the direction as to time for submission of report contained in the sub-section merely as directory, with the exception that the direction does not come to play when the matter falls within the proviso.

16. I, therefore, overrule the contention advanced on behalf of the petitioner that by his failure to submit his report within the statutory time, the conciliation officer became functus officio and lost competency to carry on the conciliation proceedings any further. I make it perfectly clear that statutory directions as to time should be obeyed and a conciliation officer who does not make an all-out effort to abide by the directions as to time must not be encouraged. But I hold that his failure in this respect has not the effect of automatically ending the conciliation proceeding.

17. The rule is accordingly discharged. The conciliation officer must now finish the proceedings with all possible expedition and make his report.

18. There will be no order as to costs in this rule.