
(1963) 07 CAL CK 0016
In the Calcutta High Court
Case No : A.F.O.O. No. 58 of 1963

The Indian Iron and Steel Co. Ltd. and Another APPELLANT
Vs
Treogi Nath and Others RESPONDENT

Date of Decision : 22-07-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33C(1), 33C(2), 7(1)
West Bengal Industrial Disputes Rules, 1958 — Rule 74

Citation : AIR 1964 Cal 102

Hon'ble Judges : H.K. Bose, C.J.; G.K. Mitter, J

Bench : Division Bench

Advocate : P. Ginwalla and Sanker Ghosh, for the Appellant; Arun Prokash Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Mitter, J.—This is an appeal from an order making absolute Rule directing the Second Labour Court to hear and determine an application presented to it u/s 33-C(2) of the Industrial Disputes Act.

2. The matter arises thus: By an award of the Fifth industrial Tribunal published on September 19, 1959 forty one persons, the petitioners before this Court, who had been dismissed from service by the two respondent companies were directed to be reinstated in service and held entitled to half their salary for the entire period from October 2, 1953 to the date of their actual return to duty after the award. The respondent companies appealed unsuccessfully first to the Appellate Tribunal and then to the Supreme Court. Orders for stay of operation of the award obtained by them during the pendency of the appeals were ultimately vacated on October 15, 1957. According to the petitioners they had offered to resume their duties immediately after the publication of the award of the Fifth Industrial Tribunal but the companies refuses to take them in until the dismissal of the appeal by the Supreme Court. According to the companies the petitioners newer offered to resume their duties prior to October 15, 1957 and were not

entitled to do so by virtue of the orders for stay of operation of the award. This led to a difference between the parties as to the amounts due to the petitioners on the basis of the award. The petitioners applied to the Second Labour Court, West Bengal, for the determination of the amounts due to them. The companies raised a preliminary objection as to the Jurisdiction of the Labour Court In the matter. The short point taken by the companies was that in the absence of an order specifying the Second Labour Court as a Court for computation of benefits mentioned in Sub-section (2) of Section 33-C of the Industrial Disputes Act the said Court was not competent to hear the application of the petitioners and determine or compute the amounts, if any, due to them. The objection was upheld by the Labour Court with the result that the petitioners moved this Court by an application under Article 226 of the Constitution for the issue of an appropriate writ directing the Second Labour Court not to give effect to the order made by it on February 15, 1961 upholding the preliminary objection as to jurisdiction raised by the companies. The Rule which was issued by a learned single Judge of this Court was ultimately made absolute and the companies have come up in appeal.

3. The provisions of Sub-sections (1) and (2) of Section 33-C contained in Chapter VII of the Act are as follows:

"(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1)." Rule 74 of the Bengal Industrial Disputes Rules framed in 1958 provides:

"An application u/s 33-C shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of West Bengal in the department of Labour or to such officers to whom powers have been delegated u/s 39 of the Industrial Disputes Act"

4. Under the ordinary law of the land a workman who claims to be entitled to any money under an award may file a suit against the employer for recovery of the same. Section 33-C provides for a more convenient method of recovery and an application by a workman to the appropriate Government is the step to be taken by him in this regard. If the appropriate Government is satisfied after the

scrutiny of the claim, necessarily involving bearing given to the employer, it can issue a certificates for that amount to the Collector who can proceed to recover the same as an arrear of land revenue. This obviates the necessity of taking out execution after a decree is made in favour of the workman which he would hum bad to do if he had to file a suit and thus the attendant delay and harassment in execution proceedings an avoided. There may be cases however where the award does not expressly mention the amount due to the workman but indicates the basis of computation or provides for benefits of which the money value has to be fond out. In such cases a mere application u/s 33-C(1) is not enough and computation has got to be made to find out the money value of the benefits to which a workman is entitled under an award. Sub-section (2) of Section 33-C lays down that such computation is to to done by "such Labour Court as may be specified in this behalf by the appropriate Government" and thereupon the amounts so determined may be recovered as provided for in Sub-section (1). The whole dispute in this case is whether it is open to a workman directly to approach a Labour Court for the purpose or whether he has to approach the appropriate Government for the specification of a Labour Court for such purpose in the absence of determination by the Government that applications under. Section 33-C(2) must be made to a particular Labour Court functioning in the State.

5. According to the petitioners all Labour Courts in the State have general jurisdiction u/s 33-C(2) and it is not necessary either for the Government to specify that a particular Labour Court will have jurisdiction to deal with this matter or for any workman to approach the Government for such specification. The learned Trial Judge proceeded on the analogy of Section 13 of the Civil Court Act (XII) of 1887 and held that

"In the absence of specification all Labour Courts" must be deemed to have jurisdiction, over matters specified in the second Schedule to the industrial Disputes Act including a matter u/s 33-C(2) of the Act."

6. It is therefore necessary to consider the jurisdiction of Labour Courts and examine the position as to whether they are competent to act u/s 33-C(2) in the absence of specification by Government. Labour Courts are constituted u/s 7(1) of the Act which provides:

"The appropriate Government may, by notification IB the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to then under this Act."

It will be noticed that the main jurisdiction of Labour Courts extends only to the adjudication of Industrial disputes relating to any matter specified in the Second Schedule. They are also competent to perform "such other functions as may be assigned to them under the Act." This suggests that such functions are outside the Second Schedule and must be such as the Government may assign to them

under the Act. The Second Schedule to the Act is headed "matters within the jurisdiction of Labour Courts" and contains six items, the last being "all matters other than those specified in the Third Schedule". The Third Schedule in its turn is headed "matters within the jurisdiction of Industrial Tribunals" and contains eleven items, the last being "any other matter that may be prescribed". Industrial Tribunals are constituted u/s 7-A(I) of the Act which lays down that

"The appropriate Government may, by notification in the Official Gazette constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule."

7. The mere constitution of Labour Courts and Industrial Tribunals however leads to nowhere. Before a Labour Court or an Industrial Tribunal can take cognizance of any dispute or any matter appearing to be connected with or relevant to the dispute there must be a reference to one or the other of them by the appropriate Government u/s 10(1). Under Clause (c) of Section 10(1) such a dispute or matter, if it relates to any matter specified in the Second Schedule is to be referred to a Labour Court for adjudication but it is competent to the Government to refer such dispute or matter to a Tribunal for adjudication irrespective of the question as to whether the same relates to any matter specified in the Second Schedule or the Third Schedule. Section 10(1) makes it clear that a Labour Court or an industrial Tribunal can only take cognizance of a matter or dispute when there is a reference to it by Government. u/s 10(2)

"where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly."

This goes to show that even where the parties to the dispute or matter are agreed that a Court or a Tribunal should adjudicate thereupon, they have to apply in the prescribed manner to the appropriate Government for the purpose and the reference to the Court or the Tribunal is to be by the Government. The Sub-section does not explicitly lay down whether it is open to the parties to choose a particular Court or an Industrial Tribunal out of several functioning in the State and approach the Government for reference to that particular Court or Tribunal but as the overall power of reference is given to Government alone it appears to be reasonable to hold that it is the Government's choice of a particular Court or Tribunal that matters and it is not open to the parties to select a particular Court or Tribunal and approach the Government that the same be referred to that particular authority. Government can however accept the proposal of the parties.

8. The jurisdiction of the Labour Courts is limited by the items specified in the second schedule and even with regard to these their powers are dormant so long

as there is no reference to them u/s 10(1) (b) or (c) of the Act. The only instance when they can exercise any power without specific reference by the Government seems to be u/s 33(1) and Section 33(3) of the Act where it is open to a Labour Court to give permission in writing to an employer to take the steps mentioned in Clauses (a) and (b) of the said sub-sections.

9. In my view, Section 7(1) only enables the appropriate Government to assign certain functions to Labour Courts within the limits specified by the Act. It seems reasonable to hold that Government can make use of the rule making powers u/s 38 of the Act for the purpose but nothing appears to have been done in that respect. The expression "as may be assigned to them under this Act" in Section 7(1) does not mean "as they are competent to discharge under the Act." Before a function can be discharged there must be assignation under the Act.

10. An argument was put up on behalf of the respondents that on a construction of the second and the third schedule read with Section 7 and 7-A it should be held that any matter not specifically mentioned in the third schedule fell within the ambit of the second schedule and as such could be dealt with by Labour Courts u/s 7. I find myself unable to accept this contention. It is true any matter relating to an Industrial dispute not prescribed under item 11 of the third schedule and not covered by the items 1 to 10 of that schedule would be included in item 6 of the second schedule but then the jurisdiction of the Labour Court would only be attracted when there was a reference by the appropriate Government. A Labour Court is a special Tribunal which may be constituted at any time by the Government of a State whenever the latter feels it necessary to create one for the adjudication of certain industrial disputes and matters connected therewith. Except u/s 33 It can exercise no jurisdiction with regard to any matter not specially referred to it. Even when some difficulty is felt in the matter of interpretation of any provision of an award or settlement it is not open to the parties to approach a Labour Court or Tribunal for the purpose but Section 36-A provides that the Court or the Tribunal can interpret the award or settlement only on a reference to it by the appropriate Government.

11. Reference may be made to the observations in *Rifle Factory Co-operative Society Ltd. (Stores Branch) Vs. Fourth Industrial Tribunal and Others*, that

"the Industrial Tribunal is not a Court of general and residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the order of reference. The Industrial Tribunal is an ad hoc Tribunal with ad hoc jurisdiction to determine specified industrial dispute."

12. Our attention was drawn to a judgment of the Madras High Court in *South Arcot Electricity Distribution Co. Ltd. Vs. Elumalai and Others*, , and specially to paragraph 7 at p. 403 which contains an observation reading "under Sub-section (2) when any workman claims that any money is due to him the value of "which can be computed in terms of money then he can go to the Labour Court and apply that the amount be determined." It is necessary however to note in this

connection that the Court was not there concerned to enquire as to how the matter reached the Labour Court but was only examining its jurisdiction.

13. Rule 74 of the West Bengal Industrial Disputes Rules is general in its terms and is not limited to Section 33-C(1) alone as it is the Government which has to Issue a certificate for the amount due to a workman to the Collector. In my opinion, an application to Government is a first step to be taken in the matter. Where the money due to the workman is already quantified in the award no further computation is necessary but the Government must nevertheless satisfy itself after giving a hearing to the employer that the money is due. I can see no reason why the workman should be allowed to by-pass that step and approach the Labour Court directly for computation under Sub-section (2). It is possible that Government may, after giving a hearing to the employer concerned, be satisfied that the claim of the workman is unjustified and no computation is necessary. Labour Court or an Industrial Tribunal is not like an ordinary Court of the land to which aggrieved parties may resort whenever they think fit to do so. Under the Industrial Disputes Act Government seems to have a say in the matter whenever it thinks that industrial harmony is about to be broken or has been disturbed necessitating a reference to a Board, Court or a Tribunal.

14. In my view, the analogy of Section 13 of the Bengal, Agra and Assam Civil Courts Act is not applicable to the jurisdiction of Labour Courts under the Industrial Disputes Act. u/s 13(1) of the Civil Courts Act, it is the Local Government which can by notification in the Official Gazette fix and alter the local limits of the jurisdiction of any Civil Court under the Act. Clause (2) of Section 13 provides that if the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognisable by the Subordinate Judge or Munsif as the case may be as, subject to any general or special orders of the High Court, as he thinks fit. It was pointed out by Mukherjea, J. (as he then was) in Masrab Khan Vs. Debnath Mali alias Abhu Mali and Others, that "an order u/s 13(2) of the Civil Courts Act does not effect a transfer of jurisdiction. It merely distributes, as a matter of convenience and with reference to certain local areas, the civil business amongst two or more Courts, each of which has jurisdiction over the whole area. In such cases neither of the Courts would lose the jurisdiction which it acquired u/s 13(1) of the Act." Referring to this case in Jagabandhu v. Sivaprosad, 53 Cal WN 629, Chakravarti, J. (as he then was) pointed out

"that the source of the jurisdiction of the Munsif, was the order made by the Local Government u/s 13(1) of the Civil Courts Act and that an order u/s 13(2) by the District Judge of the station merely distributes as a matter of convenience, and with reference to certain local areas, the civil business amongst two or more courts each of which has jurisdiction over the whole area."

The same cannot be said of the jurisdiction of Labour Courts under the Industrial Disputes Act. It is the magic wand of the reference by the appropriate

Government which excites a Labour Court Into life and as soon as the matter referred to it is dealt with and disposed of and an award made the Court ceases to be functus officio. As already pointed out it cannot even interpret its own award in case of any difficulty unless a reference is made to it again.

15. For all the above reasons, I hold that the Labour Court was right in declining to go into the matter and the Appeal should be allowed. The Judgment and order of the learned trial Judge are set aside and the Rule Is discharged.

16. Parties will pay and bear their own costs of hearing before this Court as also of the application under Article 226 of the Constitution before the trial Court.

17. Certified for two Counsel.

Bose, C.J.

18. I agree.