
(1986) 07 MAD CK 0022

In the Madras High Court

Case No : Writ Appeal No. 699/80

The Workmen of Hindustan Construction Co. Ltd.	APPELLANT
Vs	
Management of Hindustan Construction Co. Ltd. and Others	RESPONDENT

Date of Decision : 29-07-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 4
Minimum Wages Act, 1948 — Section 4, 5(2)

Citation : (1987) 1 LLJ 451 : (1987) 1 MLJ 40

Hon'ble Judges : M.N. Chandurkar, C.J;M. Srinivasan, J

Bench : Division Bench

Judgement

M.N. Chandurkar, C.J.—This writ appeal arises out of a dispute between the workmen of the Hindustan Construction Co. Ltd., Madras

and the Management of the Hindustan Construction Co. Ltd., Madras. As many as 321 workmen were terminated by the Management on 20th

March, 1973. A settlement under S. 12(3) of the Industrial Disputes Act, hereinafter referred to as the Act, was entered into between the

Management and five workers purporting to represent the entire body of workers. This settlement was arrived at in the course of conciliation

proceedings before the Deputy Commissioner of Labour on 23rd June, 1973. In pursuance of the settlement 310 workers were taken back while

11 workers were not so taken back in employment. A dispute came to be referred to the Labour Court, Madras, as to whether the non-

employment of eight workmen was justified and if not to what relief were they entitled. The dispute ultimately was prosecuted only in respect of

seven workers. The Labour Court framed a preliminary issue on the contention of the Management that the reference was bad and not valid

because there was already a settlement entered into under S. 12(3) of the Act, between the Management and the workers which covered the

question of non-employment of eleven workers including the eight workers mentioned in the reference. The Labour Court accepted the preliminary

contention and held that the reference was bad and the dispute was not maintainable.

2. This order of the Labour Court was challenged by the Union in the writ petition in this Court. The main contention with regard to the invalidity of

the settlement under S. 12(3) of the Act raised by the Union was that the Deputy Commissioner of Labour of Tamil Nadu, who signed the

settlement dated 23rd June, 1973 was not the Conciliation Officer at the relevant time therefore, the settlement was not valid and binding upon the

employees.

3. The learned Judge, on a construction of the notifications issued under S. 4 of the Act on 22nd July 1966, 17th June 1970, 21st January 1970,

23rd October, 1974 and 2nd May, 1977, took the view that the Deputy Commissioner of Labour was, at the material time, that is, when the

notification dated 17th June, 1970 was operative between 17th June, 1970 and 17th January, 1974 duly authorised to function as a

Conciliation Officer. The learned Judge, therefore, dismissed the writ petition.

4. In order to appreciate the contention raised on behalf of the appellant and the argument advanced on behalf of the appellant and the argument

advanced on behalf of the respondents Nos. 2 and 3, namely, the Government and the employer, it is necessary to refer to certain notifications

which are issued by the State Government in exercise of the powers conferred by S. 4 of the Act. The Deputy Commissioner of Labour Madras,

Madurai and Coimbatore who were three different Officers, were for the first time, appointed as Conciliation Officers, under S. 4 of the Act in

1966. In addition to the three above mentioned officers, the Commissioner of Labour, the Special Deputy Commissioner of Labour, the Assistant

Commissioner of Labour-1 and Assistant Commissioner of Labour (Establishment General) were also appointed as Conciliation Officers charged

with the duty of mediating in promoting the settlement of Industrial disputes Act. In addition there were several Labour officers at different places in

the State of Madras, who were also so appointed. Then there was a notification

issued on 17th June, 1970. The operative part of this notification reads as follows :

In exercise of the powers conferred by S. 4 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) and in supersession of the Industries,

Labour and Housing Department. Notification II, I No. 3075 of 1966, dated 22nd July, 1966 published at pages 1210 of Part II Section I of the

Fort St. George Gazette, dated the 3rd August, 1966, subsequently amended, the Governor of Tamil Nadu hereby appoints the Officers specified

in column (2) of the table below to be the conciliation officers charged with the duty of mediating in and promoting the settlement of Industrial

Disputes for the area specified in column (3) of the table and for the industries specified in the corresponding entries in column (4) thereof with

effect on and from 1st July, 1970.

Admittedly, in the table containing the designation of the Officers who were so appointed under S. 4 of the Act by this notification dated 17th June,

1970 which is expressly stated to have been issued in supersession of the notification dated 22nd July, 1966 none of the seven Officers, namely,

the Commissioner of Labour, the Special Deputy Commissioner of Labour the Deputy Commissioner of Labour at three places, Madras, Madurai

and Coimbatore, the Assistant Commissioner of Labour-1, and the Assistant Commissioner of Labour (Establishment General) find a place. Some

of these officers were included in the table which is a part of a further notification dated 12th January, 1974 which is also issued in exercise of the

owers conferred by Section 4 of the Act and is expressly stated to be in supersession of all previous notifications dated 12th January, 1974 and is

superseded by another notification of 23rd October, 1974 with which we are not concerned. Then in 1977 the Government issued another

notification on 2nd May, 1977. Since it is this notification which has been the subject of debate, it is necessary to reproduce the same which is as

follows :

In exercise of the powers conferred by Section 4 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) the Governor of Tamil Nadu

hereby makes the following amendment to the Labour and Employment department Notification No. II(2) LE/283(ah)/74 dated the 12th January,

1974 published at pages 3-4 of the Gazette Extraordinary of Part II-Section 2 of

the Tamil Nadu Government Gazette dated the 14th January, 1974.

Amendment : In the preamble to the said notification for the sub-paragraph, the following shall be substituted, namely -

The notification hereby issued shall be deemed to have come into force on and 1st July, 1970 in respect of the following categories of officers and

in case of others, it shall come into force on and from 14th January, 1974.

(i) Commissioner of Labour, Madras

(ii) Joint Commissioner of Labour, Madras.

(iii) Special Deputy Commissioner of Labour, Madras.

(iv) Deputy Commissioner of Labour, Madras, Madurai and Coimbatore

(v) Assistant Commissioner of Labour, Madras.

On the face of it, this notification is a notification for amendment of the earlier notification dated 12th January, 1974. Apart from being an amending

notification a part of it is made retrospective with effect from 1st July, 1970 and the other part of it is also retrospective but with effect from 14th

January, 1974. The retrospective amendment which is made effective on and from 1st July, 1970 relates to the inclusion of the following five

Officers in the notification dated 17th January, 1970.

(i) Commissioner of Labour, Madras

(ii) Joint Commissioner of Labour, Madras

(iii) Special Deputy Commissioner of Labour, Madras

(iv) Deputy Commissioner of Labour, Madras, Madurai and Coimbatore

(v) Assistant Commissioner of Labour, Madras

As already pointed out, the notification, dated 17th June, 1970 contained the names of only the Labour Officers who were appointed as

Conciliation Officers and neither the Commissioner of Labour nor the Joint Commissioners of Labour, nor the Special Duty Commissioner of

Labour, nor the Deputy Commissioner of Labour, Madras, Madurai and Coimbatore, nor the Assistant Commissioner of Labour, Madras, was

among the persons appointed as Conciliation Officers.

5. Plainly read, the object of the Government in issuing this notification is to invest the above mentioned Officers as the Conciliation Officers in the

notification dated 17th June, 1970.

6. It is not in dispute, as observed by the learned Judge, that this notification came to be issued at the instance of the Employers Federation of

Southern India, who on 16th February, 1977 addressed a letter to the Commissioner and Secretary to Government, Department of Labour and

Employment, Madras, drawing the attention of the Government of the fact that the Commissioner of Labour, the Joint Commissioner of Labour,

the Deputy Commissioner of Labour and the Assistant Commissioner of Labour had carried on conciliation proceedings and innumerable

settlements under S. 12(3) of the Act both unit-wise and industry-wise had been signed in their presence under the bona fide belief that the Official

concerned was the Conciliation Officer under the Act. As the learned Judge has pointed out, it was only when this letter was written by the

Federation that the Government realised that the above mentioned officers were omitted from the notification dated 17th June, 1970. In order to fill

up this lacuna Government took recourse to the power of issuing a notification by way of an amendment. The learned Judge took the view that the

omission of the above mentioned Officers like the Assistant and Deputy Commissioner of Labour, must be construed to be inadvertent and an

incidental omission because, according to the learned Judge, there was no reason whatsoever that all of a sudden in 1970 the Government should

take away the powers conferred on the Commissioner of Labour, Deputy Commissioners of Labour and Assistant Commissioner of Labour to act

as Conciliation Officers, when till then, they had jurisdiction to act as Conciliation Officers over the whole of Tamil Nadu and over all industries. It

was argued before the learned Judge that the notification dated 16th April, 1977 must be construed as a clarificatory notification. The learned

Judge took the view that when the notification of 1970 was issued the Government has no intention of taking away the powers already conferred

on the highest officers of the Labour department, by the notification of the year 1966 to act as the Conciliation Officers and that the Government

Order dated 16th April, 1977 could not be read in isolation and interpreted in such a way that for the first time power has been conferred on the

Commissioner of Labour, Special Deputy Commissioner of Labour, Deputy Commissioners and Assistant Commissioners of Labour, to act as

Conciliation Officers with retrospective effect from 1st July, 1970. The learned Judge accepted the argument that the notification dated 16th April,

1977 should be read as a clarificatory notification only. The learned Judge placed reliance for this more of construction on a decision of the

Supreme Court in Y.A. Mamarde and Nine Ors. and Ghanshyam and Others Vs. Authority under the Minimum Wages Act (Small Causes Court)

Nagpur and Another, to which we shall refer later.

7. The position which has been conceded before us is that the notification dated 2nd May, 1977 would not be valid if it is construed as a

notification retrospectively, appointing certain officers as conciliation officers. What has been argued before us both on behalf of the Government

and on behalf of the employer is that the notification of the year 1977 must be read purely as a clarificatory notification and when the notification of

1970 was stated to be in supersession of the notification of 22nd July, 1966, such supersession must be construed as a partial supersession

especially with respect to the redistribution of the areas within which the Labour Officers could exercise jurisdiction. It was contended that the

notification of 17th June, 1970 cannot be read as evidencing an intention to take away the jurisdiction which was already vested in the higher

officers of the department like the Commissioner of Labour and the Deputy Commissioners of Labour by the earlier notification of 22nd July,

1970. What was suggested to us was that the notification of 2nd May, 1977 should be used for a limited purpose of getting an insight into the mind

of the Government and that notification disclosed that the Government never wanted the higher officers who were mentioned in the earlier

notification but not in the notification of 1970 to cease to exercise powers as Conciliation Officers.

8. With respect to the learned Judge, we are unable to appreciate how a notification of 2nd May, 1977 can be construed as a clarificatory

notification. It is an established principle of construction that the intention of either the Legislature of the Government which issues notifications in

exercise of statutory powers must be ascertained on the words used in the Legislation or the words in the statutory notification. Any

correspondence which transpired between the different officers of the Government or at any other level in the departments of the Government

cannot control the meaning of the notification especially when there is no ambiguity about what was intended to be done by the Government by issuing the notifications. We must remember that we are dealing with a notification issued in the exercise of a statutory power. In the exercise of statutory power, the Government has to appoint certain persons to perform certain statutory functions. The function of a Conciliation Officer is by the statute to be performed by the person, who is appointed by the Government under S. 4 of the Act. If there is no ambiguity about the identity of the persons who are appointed, it is difficult to see how there is any scope for the argument that a notification which enumerates certain Officers expressly needs clarification by way of including certain other officers who were excluded from the notification though they were included in a similar notification issued in the exercise of the same power at an earlier point of time.

9. Undoubtedly in 1966 the Government had appointed Special Deputy Commissioners of Labour and Assistant Commissioners of Labour as Conciliation Officers. When the notification dated 17th June, 1970 came to be issued that notification is stated expressly to be in supersession of the notification dated 3rd August, 1966. The legal effect of this notification is that any power which had vested in the authorities or the officers, who were enumerated by a notification dated 22nd July, 1966 by virtue of that notification could no longer be exercised by those officers who were not included in the notification of 1970. The power which was vested in them had come to an end the moment that notification was superseded. Once the notification of 22nd July, 1966 is superseded, that notification ceased to have any existence in law. We fail to see what warrant there is for the argument that a supersession contemplated by the notification of 17th June, 1970 or the notification dated 22nd July, 1966 must be construed as a partial supersession. Just as it is not open to the Court to add anything to the statute if the meaning is clear, similarly it would not be permissible to read the supersession by the notification of 1970 as a partial supersession by adding the word "partial". Assuming for a moment that the Government had committed a mistake in not entrusting the functions of Conciliation Officer to certain officers, it was a matter for the Government to consider during the period when the said notification was operative whether it required any amendment. Things became worse

when the notification dated 17th June, 1970 itself was superseded by the notification dated 12th January, 1974. We have already pointed out that the second notification of 12th January, 1974 was issued "in supersession of all previous notifications issued on the subject." Which were the other notifications superseded, is not known, but surely, the supersession would operate with respect to the notification dated 17th June, 1970 which was the notification operative when the 1974 notification was issued. By this notification of 12th January, 1974, the State Government once again vested in Officers who were originally deleted from the notification of 1970 the power of a Conciliation Officer. The plain effect of the notification of 17th June, 1970 and 13th January, 1974 is that between 17th June, 1970 and 13th January, 1974 these Officers could not exercise the statutory powers of conciliation in respect of which a notification under S. 4 of the Act was necessary.

10. The moment the notification dated 17th June, 1970 was superseded by the notification dated 14th January, 1974, that notification, in law, ceased to exist. It is therefore difficult to see under what power a non-existing notification could be amended by the State Government. If the notification itself had no legal existence, there was nothing to be amended. It is possibly because of this unassailable position that an argument that the notification is clarificatory was advanced. Clarification and amendment are two different things. The State Government itself purported to exercise a power of amendment. Before the learned Judge, the State Government has not filed any counter affidavit and we must, therefore proceed on the assumption that when the notification of 2nd May, 1977 was issued, the State Government was exercising a power of amendment. That notification was clearly invalid for two reasons. Firstly, it purports to amend a non-existing notification. Secondly, it purported to amend a notification retrospectively which power the State Government cannot exercise while issuing a notification.

11. Now coming to the argument that the notification is a clarificatory one and that we must construe the notification of 2nd May, 1977 as requiring us to read the notification of 17th June, 1970 in the light of the notification dated 22nd July, 1966 is difficult for us to see how when a notification is issued in the exercise of a statutory power and especially when that power is exercised with a view to supersede all the notifications issued earlier,

any question of reading a subsequent notification in the light of the earlier notification can arise. As already pointed out, the mind of the State

Government must be read as disclosed in the notification of 17th June, 1970. If certain Officers are not enumerated therein, they just cannot

exercise any statutory powers. With great respect, to the learned Judge, there is nothing in the decision in *Mamarde v. Authority* under the

Minimum Wages Act, which permitted such a course to be adopted. That was a case dealing with a notification fixing minimum wages in respect of

unskilled labour including casual labour. A notification under S. 5(2) of the Minimum Wages Act was issued on 21st February, 1951, prescribing a

certain minimum rates of wages for unskilled labour including casual labour in employment under a local authority. Later on, the Government issued

another notification on 23rd February, 1956 fixing revised minimum rates of wages. That notification was stated as revising the minimum rates of

wages in respect of scheduled employment in supersession of the wages fixed under the notification dated 21st February, 1951. The second

notification however did not refer to minimum rates of wages only for unskilled labour including casual labour. The argument on behalf of the

employees was that since the notification did not make any reference to any unskilled labour, the second notification must be read as referring to all

the categories of employees. This contention was accepted by the High Court. However, in appeal, the Supreme Court took the view that the

notification dated 23rd February, 1956 had to be read in the background of the notification dated 21st February, 1951, and, therefore, the later

notification must also be confined to unskilled labour. It is difficult to see how the decision can be of any assistance to the Management. That

decision turned on the fact that the subsequent notification was in respect of the minimum rates of wages of the labour which were fixed by the

earlier notification. On the two notifications an identity was clearly established with regard to the category of workers for whom the notification was

being issued in the case before us, there is no manner of doubt as to with regard to the officers appointed to the Government to perform functions of

the Conciliation Officers. No one is required to go to earlier notification of 1966 in order to ascertain the meaning and the content of the

notification dated 1st June, 1970. We are therefore satisfied in this case that the notification dated 2nd May, 1977 is wholly invalid and ineffective

in law, with the result that between 17th June, 1970 and 13th January, 1974, the Commissioner of Labour or the other Officers like Special

Deputy Commissioner of Labour were not the officers who were authorised to function as conciliation officers. In our opinion, the learned Judge

was not right when he took the view that the notification dated 2nd May, 1977 was clarificatory in character.

12. Accordingly, the appeal and the writ petition are allowed; the order of the learned Judge is set aside and the finding recorded by the Labour

Court on the preliminary issue is quashed. The matter will have to go back to the Labour Court for a decision of the dispute according to law.

Since this is a long standing dispute over 12 years it is advisable that the Labour Court shall give top priority to the matter and dispose of the

dispute expeditiously. The appellant will get the costs of this appeal from respondent No. 1, the Management Rs. 500/-