

(1960) 11 KL CK 0014
In the High Court Of Kerala

Vellanikkara and Thattil Rubber Estates	APPELLANT
Vs	
Its Workman and Others	RESPONDENT

Date of Decision : 24-11-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) 1 LLJ 727

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—In this proceeding under Article 226, Sri K.P. Abraham, learned Counsel for the petitioner, attacks the award, Ex. P. 1, passed by the industrial tribunal, Ernakulam, in Industrial Dispute No. 43 of 1958 and published in the State Gazette on 1 March 1960.

2. The relief that has been granted to the workman concerned by virtue of this award is not reinstatement as such but an alternative relief directing the management in this case to pay compensation alone and that amount has also been stated in the award of the industrial tribunal.

3. According to Sri K.P. Abraham, learned Counsel for the petitioner, even on the findings arrived at by the industrial tribunal, it cannot be stated that there is an industrial dispute coming within the ambit of the Industrial Disputes Act on which an award can be passed by the industrial tribunal. Sri Abraham also contended that the tribunal has categorically found that the workman concerned is not in the establishment of the Vellanikkara and Thattil Estate, which is the management concerned in this case, and having found in favour of the management and against the workman on this particular point, the only basis on which the tribunal has assumed jurisdiction in this case to pass an award is its further finding that

the driver is a workman employed under the proprietor of the estate and it is an industrial dispute coming under the Industrial Disputes Act and I have got

jurisdiction to adjudicate upon it.

4. The learned Government Pleader appearing for the tribunal quite naturally found it very difficult to support this award of the tribunal. But this award found some support at the hands of Sri N.K. Varkey, learned Counsel appearing for the union. Before I deal with the contentions raised by Sri Varkey, I will set out the circumstances under which this award has been passed.

5. The issue that was referred to the industrial tribunal was:

whether the discharge of Sri T.P. Inasu, driver by the management of Vellanikkara and Thattil Rubber Estate, Trichur, from 24 September 1957 is justifiable? If so and if not to what reliefs is he entitled?

6. The management took up the position that this workman was not employed in the Vellanikkara and Thattil Estate. They also set up a positive case that the workman was employed as a driver under one Sri P.P. Joseph, the manager of the estate. On the other hand, the case of the union was that the workman concerned was a driver in the Vellanikkara and Thattil Estate.

7. So far as the contention of the management that the driver was a personal employee of Sri P.P. Joseph, the manager of the estate, is concerned, the tribunal has considered the evidence and recorded a finding against the management. That is, it has come to the conclusion that the case of the management that the driver was appointed by Sri P.P. Joseph and that he was paid salary by Sri Joseph cannot be accepted.

8. Then the tribunal considered the further question as to whether the workman was in the employ of the Vellanikkara and Thattil Estate. On this the tribunal records findings at least in two places to the effect that he is not employed as a driver in the Vellanikkara and Thattil Estate. The first finding on this matter is to be found in Para. 5 of the award to the effect:

I am not in a position to say that he was employed as a driver in the Vellanikkara and Thattil Estate.

Again at the conclusion Para. 6 the tribunal further comes to the conclusion:

It is not sure to me whether he was in the establishment of the Vellanikkara and Thattil Estate.

But the tribunal comes to the conclusion that the workman concerned was employed under the proprietor of the estate and it is an industrial dispute.

9. In my opinion, subject to the contentions of Sri Varkey, which will be considered, the award on the face of it is vitiated by an error apparent on the face of the record. That is, prima facie, the finding of the tribunal that the workman concerned is only an employee under the proprietor of the estate and not on the establishment of the Vellanikkara and Thattil Estate cannot certainly support its finding that it is an industrial dispute.

10. Therefore, prima facie, the award will have to be set aside.

11. But Sri Varkey, the learned Counsel for the union, contended that the industrial tribunal has missed certain very valuable admissions stated to have been made by Sri Joseph, the manager of the estate. I am not inclined to embark upon an enquiry upon this. The tribunal has categorically considered the materials placed before it and recorded a positive finding against the workman concerned to the effect that he is not on the establishment of the Vellanikkara and Thattil Estate. This aspect also will have some bearing on the further request made by Sri Varkey to the effect that if this Court is not satisfied with the approach made by the tribunal regarding this matter the award can be set aside and the tribunal directed to reinvestigate this matter. I am not inclined to accede to this request either, because it is not as if the tribunal has not recorded any finding on this aspect nor is it a case where the tribunal has ignored very vital pieces of evidence available on record and has come to a conclusion one way or other without taking that valuable evidence into consideration. It is a case where the tribunal was conscious of an employment under the proprietor as such and the employment of the workman under the management as such and under these circumstances it has recorded positive findings which are very clear and unambiguous, namely, that the workman is not on the establishment of the Vellanikkara and Thattil Estate and that he is in the employment of the proprietor of the estate in his personal capacity.

12. The further contention of Sri Varkey, learned Counsel for the union, is that inasmuch as the union which comprises all the other workmen of this estate has taken up the case of this workman it will be an industrial dispute as held in the two decisions of the Supreme Court, namely, *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, and *Standard Vacuum Refining Co. v. their workmen* 1960 II L.L.J. 233.

13. This contention, in my opinion, need not detain me further because their lordships very categorily states in *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate* 1958 I L.L.J. 501 (supra) at p. 513:

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, and

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

In my opinion, the case before me does not satisfy either of the tests laid down by their lordships of the Supreme Court. Therefore, the only course open to me is to set aside and quash the award, Ex. P. 1. There will be no order as to costs.