

(1960) 04 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 735 of 1957

Workers employed in 32 Textile Mills in Coimbatore	APPELLANT
Vs	
Management of Dhanalakshmi Mills Ltd., Tiruppur and Others	RESPONDENT

Date of Decision : 29-04-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Evidence Act, 1872 — Section 115
Industrial Disputes Act, 1947 — Section 15, 2, 36, 7, 7A

Citation : AIR 1961 Mad 212 : (1961) 2 FLR 553 : (1960) 2 LLJ 556 : (1961) 1 MLJ 393

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : S. Mohan Kumaramangalam and K.V. Sankaran, for the Appellant; K. Rajah Aiyar, for M.R. Narayanaswami, T. Ramakrishna, for Addl. Govt. Pleader and B. Lakshminarayana Reddi, for the Respondent

Judgement

Ramachandra Iyer, J.—Sometime in 1952, there was a dispute between the management of 32 mills in Coimbatore and the workmen

employed therein in regard to the bonus payable to the latter (or the years 1919, 1950 and 1951, By C. O. Ms. No. 2019 dated 9th of May

1952, the State Government referred the dispute for adjudication to the Industrial Tribunal, Coimbatore, constituted u/s 7 of Act 14 of 1947. The

Industrial Tribunal took on file the dispute as I.D. No. 13 of 1952, and issued notices to the Secretary of the Coimbatore District Textile Workers"

Union and to the Honorary Secretary, the South Indian Mills Owner's Association, Coimbatore, the parties mentioned in the Government Order,

requiring them to file their respective statements in connection with the dispute.

The Government communicated a copy of the Government order to three other

Unions, namely, the Coimbatore District Textile Mills Staff Union, the Coimbatore District Textile Jobbers' Union and the National Textile Workers' Union. The notices were issued to those unions as well by the Industrial Tribunal. No notice was, however, given to the petitioner, namely, the District Mill Workers' Union, Coimbatore, although they had participated in the antecedent conciliation proceedings which culminated in the reference u/s 10 of the Act.

2. At an early stage of the enquiry, there was a dispute between the parties as to whether the management should give inspection of their accounts to the Union representatives. Although the Industrial Tribunal directed the management to give inspection of the accounts, the order was quashed on 30-10-1954 by this Court in W.P. Nos. 755 and 756 of 1952. In the meanwhile, that is, on 22nd October 1952, an agreement was entered into between the management and the District Textile Workers' Union, Coimbatore. In regard to the subject-matter of dispute. The petitioner, namely, the District Mill Workers' Union did not accept that compromise, and they made their position clear by a letter to the management on 28-10-1953.

The workers received the bonus, agreed to be paid under the agreement referred to above, without prejudice to their rights. That this agreement was not taken by the parties or by the Industrial Tribunal as a final settlement of the claim, is clear from the fact that, after the disposal of the writ petitions, W.P. Nos. 755 and 756 of 1952, the Industrial Tribunal Set down I. D. No. 13 of 1952 for hearing, and issued notices to various

Unions, the petitioner being one of them. In response to that notice, claim statements were filed on 14-3-1957 by the petitioner and the other

Unions, on the basis of what is now come to be known as the Full Bench, formula.

3. Three unions which are represented by the Indian National Trade Union Congress (hereafter referred to as I.N.T.U.C.) namely, (1) the

National Textile Workers' Union, Coimbatore, (2) The Coimbatore District Textile Workers' Union, Coimbatore and (3) The Coimbatore

District Textile Mills Staff Union, entered into an agreement with the management in respect of bonus for the years 1949 to 1952. To that

agreement, the petitioner, the District Mill Workers' Union, Coimbatore, was not an assenting party.

Indeed, on the 23rd March, 1957, the petitioner sent a communication to the Industrial Tri-bunal, Coimbatore stating that the Union was not

consulted by the management, while entering into the compromise. The petitioner, therefore, re-requested the Tribunal to continue the enquiry into

the dispute which had been pending for quite A long time. The Industrial dispute was taken Up for hearing on the same day. . The agreement dated

23rd of March, 1957, was sought to be recognised as one in final settlement of the dispute; the petitioner dissociated itself from the compromise,

and wanted to agitate the question of bonus.

The Industrial Tribunal overruled the petitioner's claim for hearing on the merits of the case and passed an award in terms of the agreement, dated

23rd March 1957. Annexed to the compromise was the agreement which was signed by the General Secretary of the Tamil Nad Indian National

Trade Union Congress for the workers re-presented by the Union affiliated thereto, and by the Chairman of the South Indian Mill Owners"

Association on behalf of the management of 30 mills.

4. The main reasons, on which the Industrial Tribunal rejected the claim of the petitioner for hearing of the cases are these: (1) that the petitioner

was not a party to the reference, either at the initial or subsequent stages and that no interest had been taken by them in the proceedings; (2) that

the petitioner did not object to the agreement between the District Textile Workers Union and the management; (3) that that industrial dispute

having been contested only by the National Textile Workers Union and that Union having settled the matter, the petitioner could not urge any

independent claim; and (4) that the notice issued by the Tribunal to the petitioner could not confer a right as a party and that, therefore, the

petitioner was bound by the compromise.

5. The order of the Tribunal, declining to enquire into the matter, and merely recording the compromise between the Indian National Trade Union

Congress Unions and the management, cannot amount to a valid adjudication of the industrial dispute which was referred to it for adjudication. The

Tribunal was obviously under a misapprehension in regard to the binding nature of the two compromises, successively entered into by the District

Textile Workers Union and the National Textile Workers Union with the management.

I have already referred to the fact that the former agreement was not relied on by the management or by the other workers as in any way binding on them. The proceedings were allowed to continue, even after the compromise was entered into on 28-10-1953, No disability could attach to the petitioner by reason of the fact that it did not protest when that agreement was filed. It must also be said that, factually, that statement of the Tribunal is wrong, because the petitioners made it clear, by their letter dated 28-10-1953, the receipt of which is not denied by the management, that they would not be bound by the compromise with the District Textile Workers Union.

6. The question that has to be decided is whether the compromise entered into on 23rd March 1957 by the Indian National Trade Union Congress

Unions, could be held to finally terminate the industrial dispute, and whether there has been a valid award in regard to it. The Industrial Tribunal

merely adopted the compromise, and passed an award in terms thereof. There was no finding arrived at by the Industrial Tribunal after hearing all

the parties as to whether that agreement was a fair and "just settlement of the dispute, so that it could" be adopted as an award by the Tribunal

itself.

The dispute that was referred to for adjudication was one between the management, and the workers in the 32 mills. Section 2(b) of the Act

defines "award" as meaning an interim or a final determination of any industrial dispute. The order of the Industrial Tribunal, dated 25th March

1957, purports to be a final determination of the dispute, and nothing is left outstanding to be decided. There has been no determination as such by

the Industrial Tribunal of the question referred to it.

The Tribunal had merely adopted the agreement between the parties. Section 15, which prescribes the duties of the Tribunal, directs it to, hold its

proceedings expeditiously, and submit its award to the appropriate Tribunal. There is no power in the Industrial Tribunal similar to one conferred

under Order 23, Rule 3 of the CPC to record a compromise. What the Industrial Tribunal is empowered, is to pass an award which is defined as

interim or final determination.

It is implicit in the word "determination" that it should be judicial, implying that the Tribunal exercises its own judgment. This does not, however,

mean that the Tribunal is precluded from taking note of a compromise entered into between the workers and the management. Where there is a

compromise, it should consider whether, in its opinion, the compromise could be adopted as its own determination of the dispute, that is, whether it

is fair, just and equitable between the parties.

This is necessary as the award would affect parties other than those actually appearing before the Tribunal. Section 18 of the Act states that an

award which has become enforceable shall be binding on the parties to the industrial dispute, namely, the management and all the workmen. The

binding nature of the award does not depend on any particular worker or the union to which he belongs eo nomine a party. Section 36 enables a

workman who is a party to the dispute to be represented by another of a registered Trade Union, of which he is a member, or where he is not a

member of any Trade Union, by an officer of any Trade Union connected with, or by any other workman employed in the industry in which the

worker is employed and authorised in such manner as may be prescribed.

The aforesaid provisions make it clear that, although a particular union or a worker has not been made a eo nomine party to the dispute in the

sense that no notice was issued to it or to him, any award that may be ultimately passed will be binding on him. The concerned worker or union is

therefore given a right to be represented and heard in the industrial dispute. The nature of the dispute is such, that numerous persons would be

interested in it, notice could not be given to every one of them. The right adjudicated is not an individual right, but one common to all the workmen.

7. A compromise by a few cannot, therefore, amount to a settlement of the dispute, for a compromise can only bind those who are parties to it. It

is, therefore, necessary that, the Industrial Tribunal should either make its own award or adopt a compromise entered into by the parties as a part

of its award after considering whether it is a proper one from the point of all the workmen concerned in the dispute. For that purpose the Tribunal

should give an Opportunity to all the concerned parties to show whether the compromise could be so adopted. It was not, therefore, competent

for the Tribunal to have disposed of the matter, as if it were a dispute between the actual parties to the compromise.

8. The Tribunal has given a finding that the petitioner could not be heard to

oppose the compromise. Section 38 makes it clear that the petitioner is entitled to be heard. As I stated before, the right of a worker to be heard does not depend on a notice having been given to him. It is not disputed that a large section of the workers are represented by the petitioner Union, and that even assuming that no notice was issued to the Union they would be entitled to be heard on the dispute referred for adjudication. Further, the petitioner had been taking active part in these proceedings. It had filed claims on behalf of the workers, and the Tribunal itself issued notice of the hearing to the petitioner. I cannot see how the petitioner could be said to be bound by the agreement entered into by the Indian National Trade Union Congress Unions, It follows that there had been no valid award by the Tribunal, so as to bind all the workers.

9. The management has, no doubt, settled with the District Textile Workers' Union and the Indian National Trade Union Congress Unions but these Unions do not represent the entirety of the workers working in the various milts. A considerable section of the workers belonged to the petitioner union. It may be that what was paid by the management to the various workers under the compromise could not be got back by them, but that does not mean that the petitioner would, in any way, be estopped from claiming that the industrial dispute should be settled in accordance I with law, particularly when they had received the payment of bonus without prejudice to their rights.

10. But the main difficulty in the present case is the procedure to be adopted. As I have indicated above, the Tribunal has not validly disposed of the industrial dispute by passing an award in accordance with law. It follows that the industrial dispute still remains undisposed of. The Tribunal which passed the impugned award was one appointed u/s 7 of the Industrial Disputes Act prior to its amendment by Act XXXVI of 1956. By that enactment, Section 7 of the Industrial Disputes Act of 1947 was repealed.

The functions theretobefore entrusted to Industrial Tribunals were divided between two or three sets of Tribunals namely, the Labour Courts, the Industrial Tribunals and the National Tribunals. We are not concerned in the present case with the National Tribunal. So far as we are concerned, industrial dispute like the present one will have to be referred after the amendment of the Industrial Disputes Act of 1947 by the amending Act of

1956 either to the Labour Court or to the Industrial Tribunal, Section 7-A, which is introduced by the amending Act, "XXXVI of 1956 empowers

the Government to constitute "one or more Industrial Tribunals.

Its jurisdiction is defined by Section 10, namely, that it can decide disputes referred to it by the Government under that provision in regard to the

matters specified in Schedules II and III of the Act. Section 7 enacts the constitution of Labour Courts. These Tribunals will have jurisdiction u/s

10 to decide or adjudicate upon matters specified in the Act in Schedule II, The result of the amendment is that in the place of the Industrial

Tribunals constituted u/s 7 of the Industrial Disputes Act of 1947 the Labour Court and the Industrial Tribunal constituted under Ss. 7 and 7-A of

the amended Act will have to function in the respective spheres specified in the two Schedules referred to above.

11. Mr. M.R. Narayanaswami, learned counsel for the management contends that as the Industrial Tribunal which passed the award had been

abolished by virtue of the repeal of Section 7 of the Industrial Disputes Act of 1947, the successor Tribunals would have no jurisdiction to re-

entertain the undecided disputes except in cases provided in Section 30 of the Act and that therefore this Court should not issue the writ of

certiorari which in the circumstances would be futile. The learned counsel referred me in this connection to the provisions of the original Section 7

and the new Ss. 7, 7-A and 10 in support of the contention that the Tribunals acting under the unamended Act were not the same as those

appointed under the amended Act.

Learned counsel also relied upon the provisions of Section 30 of Act XXXVI of 1956 which states thus:

(Savings as to the proceedings:) If, immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial

dispute before a Tribunal constituted under the Industrial Disputes Act, 1947, as in force before such commencement, the dispute may be

adjudicated and the proceeding disposed of by that Tribunal after such commencement, as if this Act had not been passed.

That section gives a power to the old Tribunal constituted u/s 7 of the unamended Act to complete the work that was pending before it. The

learned counsel is certainly right when he contended that that Tribunal having

been abolished by the repeal of the old Section 7 could no longer be reconstituted so as to re-entertain the dispute which had been disposed of by it. But that contention cannot lead to the conclusion that there is no authority under the amended enactment to deal with the matter in case this Court were to hold that the industrial dispute had not been validly disposed of.

It must be remembered that Act XXXVI of 1956 is only an amending Act. The provisions of Ss. 7 and 7-A empower the Government to constitute Tribunals to adjudicate upon disputes referred u/s 10. In the place of the Industrial Tribunal constituted under the old Act, two Tribunals (or three as the case may be) took its place, their jurisdiction being defined. While the Industrial Tribunal has under S, 10 power to decide all disputes, that is those"" coming under Schedules II and III like the Industrial Tribunal under unamended Section 7, the Labour Court has been given power to decide a limited class of disputes.

That does not mean that the Tribunals constituted under the new Acts are in any way. different from the old. I am of opinion that on a fair

construction of the various provisions of the Act the Industrial disputes referred for determination before the amendment of the Act in 1950 could

be decided by the appropriate Tribunal constituted under; Sections 7, 7-A or 7-B of the Act as the case may be. I am supported in my opinion by

a recent unreported judgment in W.A. No. 102 of 1958, where though this point was not discussed by the learned Judges, they have remitted the

case, which was originally disposed of by an Industrial Tribunal under the unamended Act, to the Tribunal constituted after the amendment.

12. Mr. Mohan Kumaramangalam, learned counsel for the workers, invited my attention to two decisions of the Supreme Court rendered under

the Representation of the People Act, Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, and Bhikaji Keshao Joshi and Another Vs.

Brijlal Nandlal Biyani and Others, , in support of his contention that even if the Tribunal which actually decided the case had been abolished or

become functus officio, it would be open to this Court to direct the Government to constitute appropriate Tribunal and refer the dispute to the

appropriate Tribunal for adjudication. It is however unnecessary in consider that question in the view I am taking of the pro-visions of this case.

13. The result is that the order of the Industrial Tribunal in 50 far as it purported to decide on the basis of an agreement between certain of the parties is without jurisdiction, A dispute of this nature involving as it does more than 100 workers will admittedly have to go before the Industrial Tribunal, Madras. The result will be that the Industrial dispute will have to be taken on file by the Industrial Tribunal at Madras, and disposed of in accordance with law. When the matter is taken up for final hearing it would be certainly open for the management to plead that the compromise arrangement of 23rd March 1957 is so Just and fair that it should be accepted as the basis of the ultimate award by the Tribunal. The rule nisi is made absolute. There will be DO order as to costs.