
(1962) 07 MAD CK 0021
In the Madras High Court
Case No : Writ App. No. 84 of 1960

Workers employed in Thambi Motor Service	APPELLANT
Vs	
Management of Thambi Motor Service and Another	RESPONDENT

Date of Decision : 17-07-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : AIR 1963 Mad 163 : (1963) 1 LLJ 497 : (1962) 75 LW 719 : (1963) 1 MLJ 33

Hon'ble Judges : S. Ramachandra Iyer, C.J;Kunhamed Kutti, J

Bench : Division Bench

Advocate : A. Ramachandran, for Row and Reddy, for the Appellant; Addl. Govt. Pleader and M.R. Narayanaswami, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Iyer, C. J.

1. This is an appeal against the judgment of Rajagopala Ayyangar J. in W. P. No. 320 of 1958. Irusappan and Manickam, who had been in the

service of the first respondent, were retrenched by the latter. The concerned workers raised a dispute which was duly sponsored by the appellant-

Union. On 30-10-1957, the Government of Madras made a reference to the Labour court, Coimbatore, u/s 10 of the Industrial Disputes Act the

following question; ""What retrenchment compensation, if any, are the workers, Irusappan and Manickam, entitled to?"" it will be apparent from the

form of the question that it accepts that there was a valid retrenchment, but that the dispute to be adjudicated related only to the quantum of

compensation. The reference was duly received by the Labour court, which called upon the management and the union to file their respective

statements. The Union was not satisfied with the terms of the reference. It wanted to challenge the validity of the retrenchment by having an

amendment of the question already referred to the Labour court. Though its attempts in that direction met with no response initially from the

Government, the latter finally agreed to modify the same, and, by its Memorandum dated 12-12-1957, the following amendment to the original

notification was directed:

1. Whether the retrenchment of cleaners, Irusappan and Manickam, is justified and to what relief they are entitled?

2. To compute the relief in terms of money, if it can be so computed?

From the questions stated above, it will be seen that the revised reference, which was introduced by way of amendment to the original one,

replaces the old, the effect of it being to withdraw the earlier one from the cognisance of the Labour court. The first of the two questions puts in

issue the very validity of the retrenchment which was accepted by the earlier reference. The second question is only ancillary to the first, viz.,

whether, if the answer to the first is to be in favour of the workers, the relief could be computed in terms of money. There is nothing novel about

the form of the second question, which is intended only to give jurisdiction to the reinstatement to the workers in case it was found that the

retrenchment was invalid. It will be noticed that the original reference, which was concerned only with the computation of retrenchment

compensation, proceeded on the foot of a valid retrenchment. That must be held to have been entirely superseded by an inconsistent case in the

amendment which puts in issue the validity of the retrenchment. When the amended reference came up before the Labour Court, objection was

taken on behalf of the management that it was incompetent for the Government to supersede its original reference. But the Labour Court overruled

the objection and passed an award, directing the reinstatement of the workers. Thereupon, the Management applied to this court under Article 225

of the Constitution to quash that order. Rajagopala Aiyangar, J. who heard the application, accepted the contention Of the management as to the

incompetency of the second reference, and, holding that the Tribunal had no jurisdiction to entertain and proceed upon the reference dated 12-12-

1957, set aside the award.

2. In this appeal against the judgment of Rajagopala Aiyangar, J. learned counsel for the Union contended that it was certainly within the competence of the Government, acting as it did u/s 10 of the Industrial Disputes Act, to correct any mistaken reference made by it, and that, In any event, it had the power to make a supplemental reference, adding certain questions for adjudication in addition to the pre-existing one. According to learned counsel, the second question in the later reference would be wide enough to include a claim for retrenchment compensation, if the answer to the first question happened to be against the workers. In other words, the contention was that the second reference merely added an alternative case to the first one, and, therefore, a valid one.

3. The question whether it is open to the Government to include certain additional Items for adjudication by the Labour Court or the Industrial

Tribunal came up for consideration before this court in South India Estate Labour Relations Organisation Vs. The State of Madras and Others, ,

and it was answered in the affirmative. Venkataramai Aiyar, J. delivering the judgment of the Bench observed,

The objection is one of form and is without substance. It would have been open to the Government to make u/s 10 an independent reference

concerning any matter not covered by the previous reference. That it took the form of an amendment to the existing reference and not an additional

reference is a mere technicality which does not merit any Interference in these proceedings.

This view of the learned Judge was not dissented from but was distinguished by the Supreme Court in The State of Bihar Vs. D.N. Ganguly and

Others, . But as pointed out by Rajagopala Aiyangar, J. the facts which led upto the decision in South India Estate Labour Relations Organisation

Vs. The State of Madras and Others, , are slightly different. There was no modification, in that case, of the terms of the original reference, but only

an addition of certain items to it. The same cannot, however, be said of the present case. We are unable to accept the argument of Mr. A.

Ramachandran, learned counsel for We appellant, that the second question in the revised reference would cover a case of retrenchment

compensation on the foot of the retrenchment being held valid and thereby preserving the original reference and adding one more question for

adjudication. As we said earlier, the second question in the revised reference must be taken as incidental to the first, and the substitution of the old

reference by the new one amounted to withdrawal of the earlier one--a thing which it is not competent for the Government to do. From what we

have stated above it will be clear that while the Government, acting u/s 10 of the Industrial Disputes Act, will have the power to add to, or amplify,

a matter already referred thereunder for adjudication by the Tribunal, it will have no power to supersede or cancel the old reference in such a way

as to effect a withdrawal from the Tribunal of a dispute once validly referred to it. The question whether a notification revising the question referred

is of one type or the other will depend on the construction of the relevant Government Order. On this aspect of the matter, Rajagopala Aiyangar, J.

observed,

There is no doubt that, if the first matter referred for adjudication did not touch any dispute relating to retrenchment, the addition of such an item

would be within the power of the State Government.

But as the learned Judge held, where the fundamental basis of the original order of reference is nullified by the second reference, it will not be

within the competence of the Government to amend the original reference. This view is supported by the authority of the Supreme Court in The

State of Bihar Vs. D.N. Ganguly and Others, . In that case, there was first a reference by the Government of an industrial dispute between the

management and 31 workmen specified in the order. There was a further reference on a later date of a similar industrial dispute between the same

management and 29 other workmen by the Government to the Tribunal. While the proceedings in respect of the two references were pending

before the Tribunal, the Government issued a third notification by which it purported to supersede the two earlier notifications, combining the two

disputes into one dispute, impleading all the 60 workmen involved in the two disputes and adding another Union to the dispute, and referring the

same for adjudication by the Tribunal. The Supreme Court held that the third notification was invalid. In doing so, it observed :

Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate Governments

should have an implied power to cancel its own order made u/s 10(1). If on the

representations made by the employer or his workmen the appropriate Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference u/s 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question, it is important to bear in mind that power to cancel its order made u/s 10(1), which, the appellant claims, is an absolute power, it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate Government to terminate the proceedings before the Tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate Government u/s 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide but it seems the power to cancel which is claimed is wider still We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Industrial Disputes Act.

Learned counsel for the appellant, however, contends that this decision of the Supreme Court cannot be regarded as laying down a rule that, under no circumstances, can the Government cancel its original notification referring an industrial dispute for adjudication by an industrial tribunal. To substantiate the contention he relied on certain passages in the judgment to indicate that the Supreme Court was duly dealing with the particular facts of the case. We cannot, however, agree with the contention. The Supreme Court had, no doubt, to consider the particular notifications in that case. But the rule laid down, which we have extracted above, enunciates a general principle as to the power of the Government to cancel a reference validly made by it to the Industrial Tribunal u/s 10 of the Act.

Reference is then made to the decision of the Assam High Court in *N.N. Chakravarti v. State of Assam*, AIR 1960 Ass 11. But, as the learned

Judges, in that case themselves point out, it is a mere case of amplification or addition to an existing reference which will come within the principle

of the decision of this court in *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*, .

There was then a contention, based on the decision of a Bench of the Bombay High Court in *State of Maharashtra Vs. Anantha Krishnan (K.) and*

Others, , that the Government had an absolute right to correct an erroneous reference made by it. But we are, however, unable to accept that the

Bombay High Court laid down any such general proposition. In that case there was a dispute between a company and its workers. The workers

claimed a reference. The Government refused to grant it. The management claimed a different reference and the Government decided that the

management should have the reference sought. But, unfortunately, in drafting the question for adjudication by the Tribunal, they set out only the

question relevant to the workers' claim. There was thus a disparity between the actual decision of the Government and the form in which it was

communicated. It was held that, it was competent for the Government to rectify their error and send an appropriate issue to the Tribunal for

adjudication. We cannot see how that principle can have any application to the present case. Here, a decision was taken to refer only one

question, viz., the quantum of compensation to the retrenched workers. That it was only that question that was intended to be referred to is made

clear by the fact that, on two subsequent occasions, the workers made representations to the Government that that reference should be amended

and another reference relating to the validity of the retrenchment should be substituted in that place but the Government declined to accede to that

request. It was on the third occasion that the Government was persuaded to amend the original reference in the way they did it. That shows

beyond doubt that it was not on account of any mistake that the Government revised the original reference. The first reference was the result of a

decision arrived at by the Government and the second was evidently a fresh decision on the same question. The principle of the Bombay decision

cannot obviously be applied to the present case.

4. Mr. Ramachandran then contends that the original reference itself must be treated as invalid and non est and consequently the revised reference

will be a valid one. The contention is that the workers if they wanted only a retrenchment compensation could have got it by an application u/s

33(c)(2) and there was therefore really no need for a reference u/s 10. When therefore the Government proceeded to refer the matter, it should

have been under a misapprehension on their part as to the real question to be referred. We are unable to accept this argument. Whenever the

management does a thing prejudicial to the worker, if the matter comes within Ch. VA of the Industrial Disputes Act, it would be open to him to

make his individual claim: u/s 33(c)(Z). There is also another remedy open to him. He can, if he is able to persuade a substantial number of his co-

workers to sponsor his cause, move the Government for reference u/s 10 to the appropriate Tribunal. In such a case, if the Government decides to

refer the industrial dispute so sponsored either by the Union or a substantial number of workers, it will be an industrial dispute. The fact that a

remedy exists u/s 33(c)(2) in a particular case cannot take away the right of the Government u/s 10, if circumstances exist to justify the cause to

refer the matter for adjudication by the appropriate tribunal. It cannot therefore be held that the first reference is in any way invalid. Being a valid

reference, it has got to be adjudicated by the Labour Court to which it has been referred, and it will not be open to the Government at any stage to

cancel the reference. We therefore agree with Rajagopala Aiyangar, J. that the order of the Government, dated 12-12-1957 is ultra vires and

cannot confer jurisdiction upon the Labour Court to adjudicate the dispute referred to therein.

5. The learned Judge has however merely set aside the award based on the invalid reference but he did not give any further directions. But implicit

in his judgment is a direction that the Labour Court will have to adjudicate the question originally referred" to it, viz., about the quantum of

retrenchment compensation payable to the two workers by the Labour Court. There will be a direction that the Labour Court should take up the

first reference and adjudicate the question therein contained. There will be no order as to costs.