

**(1970) 02 KAR CK 0007**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 164 of 1968**

Workmen Mysore Paper Mills Ltd.

APPELLANT

Vs

The Management Mysore Paper Mills Ltd. and Another

RESPONDENT

**Date of Decision :** 13-02-1970

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 10 (1), 10 (1) (d), 10 (4)

**Citation :** AIR 1970 Kar 212 : AIR 1969 Kar 212 : (1970) 20 FLR 389 : (1970) 1 MysLJ 287

**Hon'ble Judges :** M. Sadanandaswamy, J; K.R. Gopivallabha Iyengar, J

**Bench :** Division Bench

**Advocate :** K. Subba Rao, for the Appellant; V.L. Narasimha Murthy, for the Respondent

## Judgement

1. The reference out of which Industrial Dispute No. 147/66 before the Industrial Tribunal, Bangalore, arose, and the Award dated 30th October 1967 came to be passed by it, was made by the Government of Mysore in its Order No. LMA 268 LLD 66 dated 28th July 1966. The relevant portion of the said order reads as follows:--

"ORDER

Whereas the Government of Mysore are of opinion that an Industrial Dispute exists between the workmen and the Management of the Mysore Paper Mills Ltd., Bhadravathi, on the points noted below:

Now therefore, in exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Mysore hereby refer the said dispute for adjudication to the Industrial Tribunal at Bangalore.

POINTS OF DISPUTE.

Is the Management of Mysore Paper Mills Ltd. Bhadravathi justified in confirming

the following seven Foremen in different Grades and different rates of salary, thereby discriminating one against other with effect from the year 1940 and onwards, even though the nature of work and degree of responsibility is the same,

1. Sri N.C. Channakeshavaiah
2. Sri A.V. Krishna Swamy
3. Sri H.K. Venkataramiah
4. Sri A. M. Subba Rao
5. Sri M.V. Narayana Rao
6. Sri A. B. Sanjeeva Rao and
7. Sri P. S. Prabhakar.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF MYSORE Sd/- Deputy Secretary to Government, Labour and Municipal Adm. Department,

....."

2. After this reference was registered, the parties have filed their statements. The tribunal framed the following issues in addition to points in dispute scheduled in the order of reference,

#### ISSUE

"1. Do the first party workmen prove that the second party has adopted a policy of discrimination and are they entitled to be treated alike Sri Narayanaswamy, Sri Madhusudan and Sri Ranganna and to be placed in grade Rs. 125-10-200-12-50-300?

2. Have they lost the financial benefits as pleaded by them in para 7 of their claim statement and are they entitled to the loss of this financial benefits?

3. Is this Reference bad in law as contended by the Second Party in paras 2, 3 and 5 of their Counter Statement?

4. Is the Government not competent to make a Reference of the type that is before this tribunal and is this Reference illegal, void and inoperative and liable to be rejected?

5. To what relief is the first party en-titled?

3. After recording the evidence, the Tribunal made the Award dated 30th October 1967 rejecting the reference. It is this Award that is now sought to be quashed in this writ petition.

4. In paragraph 2 of the claim statement made by the petitioners it was mentioned that the dispute referred for adjudication is in respect of seven

foremen who have been discriminated by the II Party Management in fixation of their grades and in granting them increments, It was set out in paragraph 3 that the discrimination was with reference to one Sri T.M. Narayanaswamy, who, it is alleged was doing the same kind of work like the first three workmen referred to in the reference and was given a higher grade of salary and higher rate of annual increment even though the work done by him is of the same kind and nature as those made by persons named above.

Similarly, it was stated that the next three persons mentioned in the reference are also discriminated as two other foremen Sri M.R. Gopalswamy Rao and Sri P.S. Madhusudan who are doing the same kind of work as the three persons mentioned above are given higher grades of salary and increment. So far as the last workman named in the reference it was set out that other persons viz., Sri K. Ranganna, Sri Venkatesan and Sri C.V. Sreenivasa Iyer who are doing the same kind of work as Sri P.S. Prabhakar, were fixed at higher grades of salary. Thus, the complaint was that these seven workmen are discriminated with reference to the other workmen who are discharging the same kind of work. Another complaint was that while granting the annual increment to the seven foremen named in the Order of Reference, they are given lower grades while their juniors have been given higher grades and this is in utter disregard of all fair-play and justice. The aggrieved workmen claimed that they are entitled for equal treatment with the others referred to above by them in the fixation of grades.

5. The management first respondent in its counter statement, amongst other contentions pleaded in paragraph 6 as follows:

"Even if the reference is said to be valid the claim made by the workmen in their claim statement is entirely different from and beyond the scope of the reference. According to the reference the point of dispute is to an alleged discrimination of one against the other, regarding grades and rates of salary of the 7 persons mentioned in the order of reference. In the claim statement it is sought to be made out on behalf of the workmen that there was discrimination against all the seven workmen vis-a-vis some of the persons whose names are mentioned therein. Hence the claim statement is liable to be rejected as travelling beyond the terms of reference."

In view of this contention, the question that arises is whether it was open to the Tribunal to consider the first issue framed by it as set out earlier. The first issue deals with the question of discrimination between the first party workmen and the persons like Narayanaswamy, Madhusudan and Ranganna etc. and they are entitled to any reliefs. While dealing with this question, the Tribunal in paragraph 9 of its Award, after setting out the terms of reference, observes as follows:--

"....A plain reading of this Reference will show "that the discrimination if at all either in the matter of salary or in the matter of fixation of grades, must confine itself only to those 7 people because the Reference does not say that compared

to the other class of Foremen who are nearly 115 in number, these people have been discriminated. That is what exactly the I Party is trying to make out and in doing so the I Party is trying to enlarge the scope of this Reference and the powers of the Tribunal....."

The Tribunal further observes as follows:

"It is therefore., clear from the wordings of Section 10(4) that the tribunal has no option but to confine itself to the order of Reference and adjudicate upon the same. When the Reference very specifically says in this case that the discrimination if at all, is between these 7 people it is not open to the tribunal to go beyond this Reference and bring in other class of Foremen who are not parties to this dispute and who are not before this tribunal. If the I party felt that the scope of the present Reference is too narrow it could have been open to the I party to have moved the Government for an amendment of the Reference, Such a thing has not been done." (sic)

The Tribunal after making these observations went into the question of discrimination as set out in the claim statement and came to the conclusion that the I Party petitioners have failed to prove that the II Party management has adopted a policy of discrimination. The other issues were also held against the petitioners.

6. Sri K. Subba Rao, learned counsel appearing for the I Party-petitioners, frankly conceded that if the first issue in the case relating to discrimination is to be considered as beyond the scope of the reference, the other issues would not come up for consideration. Therefore, the arguments were mainly addressed in this case on the scope of the Reference. As set out earlier, the opinion of the Tribunal was that the discrimination if at all, is amongst the seven workmen mentioned in the reference, and it is not open to the Tribunal to go beyond this reference and bring in other class of Foremen who were named in the claim statement. If on this question relating to the scope of reference, the view of the Tribunal is correct, the petitioners would fail in this writ petition.

7. While appreciating that the wording of the Reference was unsatisfactory, inasmuch as it does not correctly embody the dispute between the parties, the petitioners" learned counsel endeavoured to persuade the Court to take the view that the reference really referred to the discrimination of the seven workmen mentioned in the reference on the one hand and those workmen who are referred to in the claim statement on the other. Sri Subba Rao contended that the pleadings of the case must be taken into consideration as setting out the exact nature of the dispute and the reference must be understood with reference to the pleadings of the parties before the Tribunal.

He further contended that the demands made by the I Party before the Conciliation Officer and the report of the Conciliation Officer should also be taken into consideration to understand the scope of the dispute. He further submitted that it is not disputed that there is a dispute between the workmen and the

management, and hence it was open to the Tribunal to understand the nature of the dispute between the parties even though it has not been set out in the order of reference.

In support of this argument, Sri Subba Rao placed reliance on several decisions. One of them is the decision of the Federal Court reported in AIR 1949 148 (Federal Court). The Federal Court takes the view that Section 10 does not require that the particular dispute should be mentioned in the order of reference of the Government. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order.

The next decision on which reliance is placed is the Supreme Court decision reported in *State of Madras Vs. C.P. Sarathy and Another*, wherein the Supreme Court has observed as follows:

"Moreover, it may not always be possible for the Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where public interest requires that a strike or a lock-out, either existing or imminent should be ended or averted without delay, which under the scheme of the Act, could be done only after dispute giving rise to it has been referred to a Board or a Tribunal ..... But, beyond this no obligation can be held to lie on the Government to ascertain particulars of the disputes before making a reference u/s 10(1) or to specify them in the order."

It is, therefore, contended that it was not obligatory on the part of the Government to set out the dispute, and it is therefore, open to the Tribunal to ascertain the real nature of the dispute and pass the Award.

8. It was pointed out by Sri V.L. Narasimhamurthy, learned counsel appearing for the Management-I respondent that these two decisions relate to references made under the Industrial Disputes Act of 1947 prior to the amendment to the Industrial Disputes Act by Act 18 of 1952. This factor to a very large extent dilutes the applicability of the said decisions to the case before us and cannot render any support to the petitioners. He invited our attention to several decisions in support of the proposition that in construing the terms of reference and in determining the scope and nature of points referred to the Industrial Tribunal, the Industrial Tribunal has to look to the order of reference and it is only the subject-matter of reference with which the Industrial Tribunal can deal. This view is supported by the decision of the Supreme Court reported in *Calcutta Electric Supply Corporation Ltd. v. Calcutta Electric Supply Workers' Union*. AIR 1959 SC 1191.

He also invited our attention to the decision of the Supreme Court reported in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, . After setting out the provisions of Section 10(4), which is as follows:

"Where in an order referring an industrial dispute to a labour Court, tribunal or national tribunal under this section or in a subsequent order, the appropriate

Government has specified the points of dispute for adjudication, the labour Court or the tribunal or the national tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

The Supreme Court has observed as hereunder in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others,

"From the above it, therefore, appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto."

The Supreme Court takes the view that the parties cannot be allowed to challenge the very basis of the issue set forth in the order of reference. In the present case, from the wordings of the reference, it is clear that the seven foremen referred to have been confirmed in different grades and different rates of salary and that one is discriminated against the other. The entire reference is confined to the discrimination inter se amongst the seven workmen referred to therein, The discrimination of these workmen on the one hand and the other workmen who are not named in the reference, cannot be taken as being incidental to the reference.

It is useful to refer to the decision of the Rajasthan High Court reported in Jaipur Spinning and Weaving Mills, Ltd. Vs. Jaipur Spinning and Weaving Mills Ltd., Mazdoor Union and Another, to which our attention is drawn. It deals with the scope of reference of an Industrial Dispute under the Industrial Disputes Act of 1947 before its amendment in 1952 and after its amendment in 1952. After referring to the several decisions, they observe as hereunder:

"In view, of the above discussion of case-law, the contention of the learned counsel for any unduly liberal interpretation of the expression "matters incidental thereto" cannot be accepted.

The same conclusion is reached on consideration of the amendments introduced in Section 10(1)(c) of the Act by the Industrial Disputes Amendment Act, 1952. Section 10(1)(c) of the Industrial Disputes Act, 1947, before the amendment, stood as follows:--

The amendment Act inserted the words, "or any matter appearing to be connected with or relevant to, the dispute" after the word "dispute." It further Introduced Sub-section (4) directing that where the appropriate Government has specified the points of dispute for adjudication, the tribunal shall confine its adjudication to those points and matters incidental thereto.

"On the language of the old law, it was held in some cases that it was not necessary that the dispute should be specified in the order of reference. On a

consideration of the amendment in the light of the observation referred to above, the legal position, to my mind, appears to be as follows:--

(1) The Government may make a reference of the dispute without specifying any matter. In such a case, the tribunal has jurisdiction to ascertain the points of dispute from the pleadings of the parties or otherwise and may adjudicate upon them all.

(2) If the Government, instead of referring the dispute generally, specify the matter, the industrial tribunal has to confine its adjudication to those points only. Insertion of this provision of reference to specific matters in the Act, considered with the further fact that it is open to the Government to amend the reference or to make an additional reference, leads me to infer that the words "matters incidental thereto" should not be interpreted so as to give vague and indeterminate jurisdiction to the tribunals especially over independent matters. After all, an industrial tribunal has no inherent absolute jurisdiction and it derives its jurisdiction only from the order of reference of the Government and, therefore, should not be permitted to ignore the intention of the Government as expressed by the plain language of the order of reference.

Yet another mode of approach, I may state that the word "incidental" according to its dictionary meaning and the ordinary accepted popular sense implied a subordinate and subsidiary thing related to some other main or principal thing requiring casual attention while considering the main thing. Obviously, matters which require independent consideration or treatment and have their own importance, cannot be considered "incidental."

9. We respectfully agree with the above observation of the Rajasthan High Court. The matter covered by the first issue cannot be considered as incidental to the dispute in the reference. It changes the basis of the reference. We cannot, therefore, consider that the question now raised before the Industrial Tribunal can be treated as incidental to the dispute referred to in the reference. Therefore, the question relating to the discrimination of seven persons on the one hand and the other workmen named in the claim statement on the other appears to us to be beyond the scope of the reference.

10. While dealing with the proposition that in order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties, the Supreme Court has observed in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, that the tribunal had to examine the pleadings of the parties, to find out the exact nature of the dispute,

"because in most cases, the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which parties were at variance leading to the trouble" (sic).

It is on this observation that Sri K. Subba Rao strongly relied and wants us to look into the pleadings to understand the scope of the reference. But, the first

respondent's counsel placed reliance on the later observation of the Supreme Court in the same decision *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, to the effect that the parties cannot be allowed to contend that the foundation of the dispute mentioned in the order of reference was something else. u/s 10(4) of the Act, he submits that the Tribunal is not competent to entertain such a question.

It is submitted that the entire reference proceeds on the existence of discrimination amongst the seven workmen named in it and inter se amongst them. It does not deal with any other type of discrimination and to accept the case as set out in the pleadings would alter the basis of the decision. There is much force in this submission.

Sri Subba Rao invited our attention to a decision of the Patna High Court reported in *Minimax, Ltd. Vs. Its workmen and Another*, It holds that there is a duty cast on the Tribunal to find out what was the real dispute referred to and to decide it and not to throw it out on mere technicality and that the Tribunal has no power to construe the reference and to look into the pleadings of parties for the purposes. It was pointed out by the learned counsel for the first respondent that Section 10(4) of the Industrial Disputes Act, 1947, did not come up for consideration in the said case as the reference was u/s 10(1) of the Act. Therefore, the observation made in the said decision cannot be of any help to the petitioners in this case, where the reference is u/s 10(4).

Sri Subba Rao also referred to the decision of the Supreme Court reported in *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, from which it can be inferred that the notices of demand issued by the workmen can be taken into consideration in order to understand the scope of the reference. The reference in the said case was in very wide terms and the Supreme Court with reference to the circumstance of the case observed as follows:--

"Therefore, taking into account the wide terms of the reference, the manner in which it was understood before the tribunal, and the fact that it must be read along with the two notices of 15 and 17 December 1960, particularly because it was made soon thereafter at the joint application of the parties, we have no doubt that the tribunal was entitled to go into the real dispute between the parties....."

The position in this case is as mentioned already different. The terms of reference are not wide or ambiguous. The point in dispute is specifically set out in the reference. The notice of demand and the annexure thereto, viz., Exhibits 6 and 6(a) do not support the contention of Sri Subba Rao as they are also in general terms and do not clarify the exact dispute that is sought to be placed before the Tribunal.

11. It is settled law that the parties cannot be allowed to challenge the very basis of the dispute set out in the order of reference. The pleadings of the parties can

be looked into only to clarify the points of dispute set out in the order of reference; but cannot be allowed to alter the terms of reference or the basis of the reference. There is no doubt that the Tribunal can go into the matters incidental to the dispute. Looking at the reference in this case, from these points of view, the contention of Sri K. Subba Rao cannot be accepted as the contention set forth in the claim statement are not incidental to the main dispute. Further, it would totally alter the scope of the reference. The wordings of the references are clear. What can be said in this case is that the Government of Mysore which made the reference did not clearly understand the exact nature of the dispute between the parties. What has been referred to is quite different from what the first party-petitioner intended. Sri Subba Rao frankly conceded that if the reference is taken on the face of it, the first party-petitioners cannot support the reference as it does not represent the real nature of the dispute.

Their contention is that they have stated in the claim statement filed by them before the Tribunal. Obviously, reference has been made in a very mechanical manner, perhaps adopting the wordings used in the demand sent by the I Party-petitioners to the Management-first respondent on 16-2-1966 (Exhibit 6). What is stated in it is as follows:--

".....The enclosed chart with the names of persons and the salary they have drawn and how they have been unilaterally and arbitrarily chanted at the time of confirmation and fitment to grade discriminating "the one against the other" is also shown." (Underlining (here in" ") is ours).

In the chart which is marked as Exhibit 6(a) before the Tribunal, the names of 8 persons are mentioned including seven persons who are referred to in the reference. One person who has been omitted in the order of reference is T.M. Narayanaswamy. We are told that he is not a member of the petitioners' Union. In the reference his name has been omitted and the names of the other seven persons are mentioned and the discrimination referred to is sought to be confined as being made one against the other. This was not the grievance of the petitioners.

In order to avoid such glaring mistakes in references it is necessary that before making the reference the Government must bestow great care so as to obviate references which are baseless and do not represent the actual dispute between the parties. We may in this connection refer to the observation of the Supreme Court reported in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, wherein the Supreme Court has observed as follows:

"It is hardly necessary to emphasise that since the jurisdiction of the industrial tribunal in dealing with industrial dispute referred to it u/s 10 is limited by Section 10(4) to the points specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders, of reference carefully and the questions which are intended to be tried by the

industrial tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably."

Sri Subba Rao relying on the last sentence in the above extract wants us not to take a too technical or a pedantic view in understanding the Reference. This contention is answered by the respondents' counsel in two ways. One is the question of interpreting the order arises if it is ambiguous. In this case, the order of reference is clear and there is no ambiguity. Secondly, it is pointed out that this decision is referred to in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, and has justified this observation stating that the facts of that case were very special and the decision must be limited to those special facts. Hence, it appears to us that the petitioners cannot get any assistance from the observation in the said decision.

12. Sri V.L. Narasimha Murthy, learned counsel for the first respondent invited our attention to the observation of the Madras High Court reported in *Ramamoorthy v. Tirunelveli District National Plantation Workers' Union* (1963) 1 LLJ 507 where the scope of Section 10(4) has been explained as follows:--

"Section 10(4) of the Industrial Disputes Act, 1947 makes it clear that where a reference is made to a labour Court for adjudication it shall confine its adjudication to the points of dispute referred for adjudication. If the reference is made on an incorrect assumption, it is certainly not open to the industrial tribunal, while so holding, to enlarge, by its own choice, the scope of the reference and widen the issues for decision and the field for enquiry including the evidence."

Our attention has been drawn to the observation of the Calcutta High Court in the same volume (1963 1 LLJ) 563 that an Industrial tribunal has no inherent jurisdiction over industrial disputes and it derives its jurisdiction only from the order of reference by the Government and should not be permitted to travel beyond the plain language of the order of reference. In construing the terms of reference and in determining the scope and nature of the points referred to the industrial tribunal, it must look at the order of reference itself. That is the only subject-matter which an Industrial Tribunal can deal. We have already referred to the decision of the Supreme Court reported in AIR 1959 SC 1191 on which the Calcutta High Court 1963 1 LLJ 563, has relied.

13. In our view, the contention now raised by the petitioners in their claim. statement before the Tribunal is beyond the scope of the reference. Reference as it is worded is not supported by the petitioners. On this ground alone the petitioners fail as the Award rejecting the reference is correct. In view of the fact

that the questions comprised in other issues do not arise for consideration, the Tribunal had no jurisdiction to deal with those questions. The findings given by the Tribunal, therefore, are without jurisdiction and hence invalid, and not binding on any of the parties.

14. In the result, this petition fails and the same is dismissed. Each party will bear his or its own costs.

15. Petition dismissed.