

(1968) 07 KL CK 0016
In the High Court Of Kerala

Workmen of Harrison and Crosfield Ltd.	APPELLANT
Vs	
Harrisons and Crosfield Ltd. and Others	RESPONDENT

Date of Decision : 03-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 228
Industrial Disputes Act, 1947 — Section 10, 25FFF, 7A

Citation : (1969) 1 LLJ 61

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—This is a petition under Article 226 of the Constitution by the Cochin Commercial Employees' Association, Cochin, representing the workmen of the Cochin branch office of Harrisons & Crosfield, Ltd., Quilon. The petitioner seeks to quash an award, Ex. P. 4, dated 10 September 1966, passed by respondent 4, the industrial tribunal, Alleppey, in Industrial Dispute No. 14 of 1962, in so far as the award provides for the scaling down of gratuity payable to the workmen. Respondent 1 is the employer :and respondents 2 and 3 are two trade unions representing other workmen employed in the office of respondent 1 under the Quilon branch.

2. In 1961, the petitioner placed a charter of demands before respondent 1. The dispute was settled between the parties as per an agreement, Ex. P. 1, dated 25 July 1931. Two issues were left open, one relating to revision of basic salary and fitment, and the other relating to gratuity. It was agreed that these issues would be settled by further conciliation, and that the existing gratuity schema would be continued, pending final settlement on the question of gratuity. But these issues could not be settled, as the petitioner was not prepared to scale down the gratuity rates, while respondent 1 was not prepared to consider the question of increasing th3 wages without scaling down the gratuity. Respondents 2 and 3 had also madia several demands. By an order dated 2D June 1962, the Government of Kerala referred twelve issues for adjudication by respondent 4. Issue 1 is "revision of salary" and gratuity is not one of the issues referred for

adjudication. Shortly before the above order was passed, respondent 1 entered into an agreement, Ex. P. 2, dated 23 May 1962, with respondent 3, settling all disputes, except the one relating to bonus. This agreement settled the question of gratuity also. Workmen, who were not represented by respondent 3, began to accept Ex. P. 2 individually, with the result that a large majority of the workmen in the employment of respondent 1 accepted the settlement thereunder. On the basis of the above fact, respondent 1 raised a preliminary objection to the maintainability of the reference on the ground that there was no industrial dispute. During the pendency of the adjudication, a conciliation settlement was effected on 26 March 1965 between respondent 1 on the one part and respondents 2 and 3 on the other part. A copy of this settlement forms part of annexure A to Ex. P. 4. This was in full and final settlement of all claims and demands, excluding bonus. It specifically provided that the gratuity scheme, as amended by Ex. P. 2, would continue to be in force. On 13 May 1965, a bipartite agreement Ex. P. 3, was entered into between respondent 1 and the Mercantile Employees' Association, which claimed to represent the workmen employed in the Cochin, Calicut and Coimbatore branches of respondent 1. Exhibit P. 3 was practically on the same terms and conditions as are contained in the conciliation settlement of 26 March 1965. Salaries were revised with effect from 1 December 1964 in accordance with Ex. P. 3; and a large majority of the workmen employed in the Cochin branch office, except a few represented by the petitioner, accepted Ex. P. 3 and received the benefits thereunder.

3. The petitioner contended before respondent 4 that the workmen who have not accepted Ex. P. 3 were entitled to have their salary revised, without the said matter being linked with the question of gratuity, and that respondent 4 had no jurisdiction to adjudicate on the question of gratuity, as it was not one of the issues referred to it. Respondent 4 decided the issue relating to bonus on the merits; and all other issues were decided on the basis of the conciliation settlement, as respondents 2 and 3 were concerned. The contentions of the petitioner in the matter of revision of salary were rejected by respondent 4; and it held that the workmen represented by the petitioner were entitled only to the revision of salary and fitment along with the scaled-down gratuity as per terms of the settlements dated 26 March and 18 May 1965. Accordingly, it passed the award, Ex. P. 4.

4. The only contention raised before me by the petitioner's learned counsel was that Ex. P. 4 in so far as it relates to the scaling down of gratuity, was beyond the jurisdiction of the tribunal. He referred me to the history behind the order of reference for adjudication. He submitted that the only two issues left over for future conciliation, after the settlement effected as per Ex. P. 1, related to revision of salary and gratuity, that of these two issues, the issue relating to revision of salary alone was referred, and the issue relating to gratuity was withheld from adjudication, that the tribunal's jurisdiction is limited to the matters referred for adjudication, and that the tribunal acted illegally and without jurisdiction in linking the question of gratuity with the revision of salary and

adjudicating on the question of gratuity. The learned counsel drew my attention to Sections 7A(1) and 10(4) of the Industrial Disputes Act, 1947(hereinafter referred to as the Act). Section 7A(1) reads as follows:

The appropriate Government may, by notification in the official gazette, constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule.

With reference to the above provision, the learned counsel pointed out that the adjudication under the Act by an industrial tribunal must be an industrial dispute relating to a matter, whether specified in Schedule II or III. Schedule III contains the list of matters within the jurisdiction of industrial tribunals. Item 1 in this list is " wages, including the period and mode of payment " ; and item 5 is " bonus, profit-sharing, provident fund and gratuity." He, therefore, submitted that " wages " and " gratuity"" are different and independent matters for adjudication under the Act. Section 10(4) of the Act reads 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, tribunal or national tribunal shall confine its adjudication to those points and matters incidental thereto.

With reference to the above provision, the learned counsel pointed out that a tribunal is bound to confine its adjudication to points specified in the order of reference and matters incidental thereto. He submitted that adjudication on gratuity is not a matter incidental to the adjudication on salary; and that a matter which is different from another under the scheme of the Act cannot be incidental to the other. Thus, according to the learned counsel, respondent 4 had no jurisdiction in this case to touch on the question of gratuity, much less to adjudicate upon it.

5. The learned counsel for the petitioner cited the following decisions in support of his contention. The first was the decision of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, . In that case, one of the points referred for adjudication was whether the strike by the workmen, and lockout by the employer were justified and legal; and whether the workmen were entitled to wages during the period of strike and lockout. Before the tribunal, the workmen denied the strike, and the tribunal held that it was bound to decide the question whether there was any strike. Its decision was attacked on the ground that such a question did not arise on the order of reference, and the tribunal had no jurisdiction to decide it. The Supreme Court said at p. 430:

...On the order of reference, it was not competent to the workmen to contend before the tribunal that there was no strike at all; equally, it was not open to the management to argue that there was no lockout declared by it. The parties would be allowed by their respective statement of cases to place before the

tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.

I do not think that the above decision would support the petitioner's learned counsel.

6. The next case cited by him was a decision of the High Court of Jaipur Spinning and Weaving Mills, Ltd. Vs. Jaipur Spinning and Weaving Mills Ltd., Mazdoor Union and Another, . The question which arose in that case was whether the increase of wages awarded by the tribunal was incidental to the specific points referred for adjudication. Dealing with this question with reference to the facts of that case, the Court said at pp. 661-662:

...No question of increase in wages even as an alternative measure was contemplated and referred to the tribunal. It may be pointed out that the question of wages under the old conditions had already been the subject-matter of an award. There was a definite agreement about the scale of wages under the new arrangement. No dispute about the amount of wages was debated at any stage. It is impossible to accept that the question of increase in wages should be considered as " incidental" to the questions referred to the tribunal. In fact, the question of wages is wholly independent and foreign to the question referred to the tribunal....

The above passage shows that it was a decision on the particular facts of the case. It does not, therefore, help the learned counsel.

7. The third case cited was a decision of the Madras High Court in A. Khader Mohideen Brothers (Express Beedi Factory) v. its workers (North Arcot District Beedi Workers" Union) 1960 II L.L.J. 689. In that case, four questions were referred to the tribunal for adjudication; and they related to refusal to give leave for workers, deduction of wages for shortage, non-employment of two workers, and computation of any relief in money. Besides deciding the above questions, the tribunal awarded retrenchment compensation u/s 25FFF of the Act for closure of the factory on a subsequent date. The question was whether, the award of compensation was incidental to the adjudication of the questions referred. The High Court held that it was not so, and that the award of compensation was beyond the jurisdiction of the tribunal. The facts of the case before me are entirely different in nature ; and the above decision is of no help. Lastly reference was made by the learned counsel to a decision of the Supreme Court in *Burmah-Shell Oil Storage and Distributing Company of India, Ltd. v. their workmen and Ors.* 1961 II L.L.J. 1241. I have not been able to find in that

decision anything relevant to the point under discussion.

8. The learned Government Pleader supported the petitioner but the learned counsel for respondent 1 joined issue with them. He supported the view of the tribunal, and contended that the question whether the adjudication of one matter is incidental to the adjudication of another matter depends on the facts of the case, the pleadings of the parties, and the issues which properly arise for determination on the pleadings. He submitted that salary and gratuity both depend on the financial ability of the employer ; that both are interrelated, and that, in view of the fact that a vast majority of the workmen had accepted the increase in salary subject to the scaling down of the gratuity, and the contention of the employer that the salary could not be revised, except on the above basis, an adjudication on the question of gratuity was incidental to the adjudication on the revision of salary. I am inclined to accept the above contention. The fact that a question can by itself be the subject-matter of an adjudication does not mean that it cannot arise incidentally in the adjudication of another question. A matter, which is independent in one context, may become subsidiary to another matter in a different context. It all depends how and under what circumstances it arises. I am, therefore, of the view that on the facts of the case and in the nature of the contention raised by respondent 1, the question of gratuity arose as a matter incidental for the proper and just adjudication on the revision of salary.

9. The learned counsel for respondent 1 submitted that, even if the decision of respondent 4 on the question of salary is vitiated by reason of the fact that it was made conditional on the scaling down of gratuity, this was not a proper case for the exercise of the jurisdiction of this Court under Article 228 of the Constitution. Now the position with regard to salary and gratuity payable to the workmen of respondent 1 immediately before the passing of Ex. P. 4 was that there was a valid and binding conciliatory settlement dated 26 March 1965 between respondent 1 on the one part and respondents 2 and 3 on the other part, who represent the workmen employed in the offices of respondent 1 under its Quilon branch. As regards the workmen employed in the Cochin, Calicut and Coimbatore branches, there was the bipartite agreement, Ex. P. 3, dated 13 May 1965, and this agreement had been accepted by 94 workmen, out of a total of 116. Thus, there were then only 22 workmen, who did not accept the above settlement. The overall position was that, out of a total employment strength of 384 workmen, 362 had accepted the settlement regarding salary and gratuity. The award of respondent 4 is in accordance with the said settlement, I can hardly find any reason to think that a settlement accepted by such a large majority of workmen would not be just and fair in the interest of the industry or the workmen in general. The learned counsel for the petitioner conceded that if I hold that the decision of the tribunal on the question of salary is bad, I should set aside the award, and remit the case to the tribunal to decide that question afresh without being linked with the question of gratuity. Then I asked the learned counsel what would be the resultant position : 362 out of 384 workman would be governed by the terms and conditions of the settlements, which they

have accepted ; and they would draw salaries and gratuity at the rates fixed therein, while 22 persons said to be represented by the petitioner would get salaries at different rates, and gratuity at old rates. This would create in an establishment two classes of workmen, who cannot be differentiated on any reasonable basis; and nothing more harmful can be done to the welfare of the industry and the workmen by creating such a situation.

10. It is a well-established principle of industrial law that a minority shall not be allowed to jeopardize the rights of a majority. The principle was applied by the Supreme Court in *Amalgamated Coffee Estates, Ltd., and Ors. v. their workmen and Ors.* 1965 II L.L.J. 110. In that case, a dispute was compromised by agreement between the employers and their workmen, when appeals with special leave were pending before the Supreme Court from the award of an industrial tribunal. Thereupon, the appellants moved that the appeals may be disposed of in terms of the settlement; but it was objected to by some of the workmen, on the ground that they were not parties to the agreement, and the agreement was not binding on them. The Supreme Court, however, remitted the case to the tribunal, calling for a finding whether, in view of the fact that admittedly a large number of workmen employed by the appellants had accepted payments consistently with the terms of the agreement set up by the employers, it was shown by the objecting-workmen that the said agreement was not valid and binding on them. The tribunal returned a finding that, in every estate, payments were made in terms of the settlement, that such payments were voluntarily and knowingly accepted by the workmen, and that the settlement was a fair settlement, having regard to the basic facts of the dispute between the parties. In the light of the above finding, the objection of the dissenting workmen was overruled ; and the appeals were decided in accordance with the settlement. In doing so, the Supreme Court said at p. 111 ;

The settlement appears to us also to be a fair one. We are, therefore, of opinion that the two appeals should be decided in accordance with the settlement. Even those estates which were not parties to the settlement; are prepared to abide by it. We think that in the interest of uniformity/and industrial peace the settlement should bind all estates which were represented before the special tribunal.

Applying the same principle to the present case, it would follow that the settlement effected between respondent 1 and the majority of its workmen regarding salary and gratuity along with other matters and accepted by 362 workmen out of a total strength of 384 is binding: on all the workmen. This is all what the industrial tribunal has decided; and it is a very proper and just decision. Therefore, the powers of this Court under Article 226 of the Constitution would not be exercised to interfere with such a decision.

11. The learned counsel for the petitioner submitted that the question whether the petitioner is representing the majority of the workmen should be decided as on the date when the dispute arose ; that at that time the petitioner was representing the majority of the workmen employed in the Cochin branch of

respondent 1; that the workmen were influenced by respondent 1 to accept the settlement individually; and that it was an unfair labour practice. I do not agree. The settlement was first arrived at between respondent 1 and respondent 3, who represented a major section of the workmen employed in the offices under the Quilon branch. Then it was followed by the conciliation settlement, dated 26 March 1965. Subsequently, another agreement was arrived at on the same terms between respondent 1 and the Mercantile Employees' Association, which claimed to represent a large section of the workmen employed in the Cochin, Calicut and Coimbatore branches. Even in the face of the settlements, the petitioner remained adamant; and it was, under these circumstances, that the workmen represented by the petitioner left their trade union one after another, and accepted individually the settlement which the large majority had already accepted. I can find absolutely no unfair labour practice on the part of the management in allowing the workmen to accept such a settlement individually, or on the part of the workmen in leaving their trade union and dealing individually with the management. Generally speaking, this is the only method for the workmen to get themselves relieved from the tyranny of a trade union of which they are members, and for the management to establish industrial peace in the face of obstinate opposition from selfish and misguiding labour leaders. If the petitioner lost its majority, and if there are now only very few workmen behind it, it must accept that position, and bear the responsibility for the result. It cannot throw the blame either on the management or on the workmen who left it. There can also be no doubt in the light of the decision of the Supreme Court in *Amalgamated Coffee Estates, Ltd. and Ors. v. their workmen and Ors.* 1965 II L.L.J. 110 (vide supra) that it is the duty of the tribunal to adjudicate the dispute referred to him in accordance with the settlement, if any, even if it be one arrived at during the course of the adjudication proceedings.

12. In the result, I dismiss this original petition. There will be no order as to costs.