

(1996) 06 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 730 of 1996

Workmen of Manipal Power Press

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 03-06-1996

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10 (4)

Citation : (1997) ILR (Kar) 448

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : M.C. Narasimhan, for the Appellant; S.V. Shastri, for R3 and R.
Gururajan, for R2, for the Respondent

Final Decision : Allowed

Judgement

Kumar Rajaratnam, J.—The Writ Petition is taken up with the consent of parties.

2. The petitioner-union representing 64 workmen seeks to challenge the legal validity of the order passed by the Industrial Tribunal dated 13.12.1995. The Government of Karnataka by its order dated 10/01.1983 held that an Industrial Dispute exists between the petitioner and the management of respondents 2 and 3 and made a reference to the Industrial Tribunal on the following points of dispute:

"Are the 64 workmen as detailed in the Annexure appended to this Government Order working in the Manipal Power Press, Manipal represented by the Manipal Printers and Publishers employees Association, Udipi, justified in demanding that they should also to be considered as employees (News paper Employees) of the Manipal Publishers and Printers (P) Ltd., Manipal, from the date of their appointments with will consequential benefits arising out of various wages Board recommendations and awards for journalists",

If not, to what other relief these employees are entitled to "

3. A perusal of the points of dispute makes it clear that the dispute was between the Union on one side and M/s. Manipal Publishers and Printers (P) Ltd., and Manipal Power Press, on the other side. Unfortunately, although there is a reference to the Manipal Power Press, notice was not sent to Manipal Power Press and the matter before the Tribunal went on for some time till Manipal Power Press was impleaded by an order dated 21.02.1991. All this controversy arose because Manipal Power Press although was a party to the points of dispute in the reference did not participate in the proceedings before the Tribunal till it was impleaded as a party in February 1991.

4. To understand the scope of controversy between the union on the one hand and the Manipal Power Press on the other hand, it may be necessary to briefly refer to the facts of the case. According to the claim of the petitioner Manipal Printers and Publishers Pvt. Ltd., (hereinafter referred to as the Second Party-management) and Manipal Power Press, Manipal (hereinafter referred to as the impleaded party-management) are jointly together and were engaged in the production and distribution of News Papers. The employees employed by them are governed by the provisions of the Working Journalists and other News paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The grievance of the union is that though the workmen were governed by the Act they have not paid their wages in accordance with the Act and the wage rates fixed on the basis of the Palekar Award and Bachavat Wage Board Recommendations. It is this act of non-compliance of the wage structure that is the root of the dispute between the petitioners and the second party - management and the impleaded party-management. The petitioner union raised a dispute claiming that they be paid different wage rate as per orders of the Government. The Government referred the matter and in the points of dispute both the union as well as the second party management and the impleaded party - management were the parties to the dispute. In other words, both respondents 2 and 3 were connected with the order of reference.

5. The workmen filed their claim statements and the second party-management filed their objections. As stated earlier, due to some administrative error notice was not sent to the impleaded party management although they were clearly connected in the points of dispute. A preliminary objection was taken by the second party-management stating that the petitioner union did not espouse the cause of the workmen. Whether it was necessary or permissible to raise such a preliminary objection, was not dear. Since the points of dispute itself refers to the fact that the workmen are represented by the union it was not necessary in my opinion to have given a finding on the preliminary issue that the union espouses the cause of the workmen. Let bygones be bygones since there was no objection from the union, the Tribunal after contest passed an order dated 26.09.1988 holding that the petitioner-union validly espouses the cause of the workmen. It may be remembered at this stage, that when this order was passed on 26.09.1988 the impleaded party-management had not been made a party to the order of the Tribunal since the impleading party-management was impleaded

only in February, 1991. It is only subsequently that the union filed an application formally to bring on record the Manipal Power Press-Third Respondent herein, viz., the impleaded party-management. The anguish of the union was that this simple impleading petition was not disposed of by the Tribunal for a very long time. The union had filed a Writ Petition praying to the High Court to direct the Tribunal to hear and dispose of the impleading petition filed by the union expeditiously. The High Court allowed the Writ Petition filed by the union and directed the Tribunal to dispose of the impleading petition within three months. Accordingly, an order was passed by the Tribunal impleading the third respondent as an additional party.

6. It appears that there can be no end in-sight for this litigation. This order of the Industrial Tribunal was again challenged by the impleaded party-management-third respondent challenging the order impleading them in the High Court in W.P.No. 4757/1995. The High Court disposed of the said Writ Petition on 28th of September 1995. The litigation whether the impleaded party-management is necessary and a proper party in the reference dated 10.1.1983, came to be concluded by an order of this Court in W.P.No. 4757/95 dated 28.9.1995.

7. The impleading party-management third respondent raised various objections before the Tribunal virtually questioning the validity of the reference. The impleading party-management filed a memo dated 1.02.1995 before the Tribunal to frame five additional issues. The application of impleaded party-management to frame additional issues was treated as I.A. No. V. After hearing the objections of the petitioner-union, the Tribunal framed five additional issues by an order dated 13th December 1995. The five additional issues that were framed once again questioned the rights of the union to espouse the cause of the workmen as vis-a-vis impleaded party-management. The burden was also shifted on the union to prove all over again, that the union espouses the cause of the workmen. It cannot be forgotten that a similar exercise was undertaken by the Tribunal to determine whether the union espouses the cause of the workmen. The Tribunal held earlier that the workmen are represented by the union as against the second party-management. Now the union have been asked to prove that they represent the workmen as against the impleaded party-management.

8. At this stage it is pertinent to note the relevant words in the points of dispute.

"Are the 64 workmen as detailed in the Annexure appended to this Government Order working in the Manipal Power Press, Manipal, represented by the Manipal Printers and Publishers employees Association, Udupi, justified in demanding that they should also to be considered as employees (News paper employees) of the Manipal Publishers and Printers (P) Ltd., Manipal...."

9. It is clear from the above that the union represents the workmen as against the second party-management as well as the impleaded party-management. Notwithstanding this reference, the following additional issues were framed;

(i) Whether the membership of the first party Association has been lawfully

extended to any of the employee/workman of the impleaded Second party? If not, whether the said Association can sustain the present reference against the said impleaded second party?

(ii) Whether the present dispute is supported by a substantial number of workmen of the impleaded Second party? If not, whether the reference is sustainable against the said impleaded Second Party?

(iii) Whether there is proper espousal of the dispute in the present reference against the impleaded. Second Party? If not whether the Reference is maintainable against the said impleaded Second Party?

(iv) Whether there is any demand properly made against the impleaded second party by the 1st party Association to sustain the present reference against the said impleaded second party? If not what will be its effect as far as the said impleaded second party is concerned?

10. As can be seen from the preliminary issue in I.A. No. V the burden is again cast on the petitioner to prove that the union espouses the cause of the workmen. If the burden was not cast on the union perhaps the petitioner may not have taken serious exception. Petitioner-union now apprehends that the entire case will have to be re-heard to enable the petitioner to prove that the union espouses the cause of the 64 workmen, as against the impleaded party-management.

11. A perusal of the issues in I.A.No. V makes it clear that the burden is cast on the union for the second time to prove that the union espouses the cause of the workmen this time vis-a-vis impleaded party. The question that will arise for consideration in this case will be " is it necessary and lawful to cast the burden on the union to prove all over again that the union espouses the cause of the workmen notwithstanding the point of reference?" The reference is not whether the union espouses the cause of the workmen but whether the workmen would be entitled to any relief as claimed in the points of dispute. The fact that the workmen are represented by the union is already there is reference and to raise such preliminary issue as in I.A.No. V would be going beyond the points of reference. Whether such course is available for the Tribunal is all that is to be determined in this Writ Petition. If the Tribunal cannot go beyond the scope of reference then certainly the Tribunal would be by these issues be questioning the very reference. That in my view is not permissible.

12. The factual assumption in the order of reference cannot be called in question. There is always a presumption in favour of the reference. It is one thing to say that the reference was not an Industrial Dispute and that the Tribunal had no jurisdiction. In this case no such contention was raised. It is well settled law that there cannot be an issue questioning the very reference in issue.

13. We are here only concerned with whether the petitioner-union espouses the cause of the workmen as determined in the reference, it was submitted by the

Learned Counsel for the petitioner that there is always a presumption that the union espouses the cause of the workmen if the Government makes a reference to that effect. It is not for the management to poke its nose into the internal affairs of the union and ask the union to prove that they espouse the cause of the workmen. This is specially so, since in the reference the workmen are represented by the petitioner-union. Learned Counsel for the petitioner relied on a Judgment of the Madras High Court reported in the case of Southern India Tannery Vs. Industrial Tribunal and Another, In the reported case one of the questions that arose was that the reference by the Government was not sponsored by, the majority of the employees of the union. The Madras High Court summed up the position succinctly in the following words:

"The further argument of the learned counsel for the petitioner is that the dispute referred by the Government to the industrial tribunal for adjudication is not a collective industrial dispute, because the requisite number of members of the establishment have not sponsored the resolution of the union concerning the dispute. But the Learned Counsel for the respondent points out that the principle about the sponsoring of an individual dispute by a collective body of workmen was laid down in The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, , while dealing with a dispute which at the outset was only an individual dispute. For ascertaining whether what was at the inception an individual dispute, had acquired the character of a collective dispute, the test is whether at the date of the reference, the dispute was taken up or was supported by the union of the workmen or by an appreciable number of the workmen of the employer, against whom the dispute is raised by an individual workman. This principle has been laid down by the Supreme Court in Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), . There can be no doubt that a dispute about the necessity to frame a gratuity scheme for the workers of a concern, is, from the outset, a collective industrial dispute and there is no question of the necessity of sponsoring such a dispute either by a majority of the workers in the concern or by a substantial number of them before a reference could be made to the Industrial Tribunal to deal with it. There are no merits in this Writ Petition which is dismissed with costs."

14. Learned Counsel for the petitioner-union also relied on the Judgment of the Supreme Court in Delhi Cloth & General Milts case. In this case the question that arose before the Tribunal was whether the "sit down" strike was justified and legal during the period of strike. This admittedly in that case was beyond the scope of the dispute. This is how the Supreme Court dealt with the matter when the Tribunal chosen to adduce evidence beyond the dispute in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, in paragraph(5):

"The Tribunal considered the pleas put forward before it and several decisions cited in support and came to the conclusion that as the strike covered by issue No. 3 and sit down strike covered by issue No. 4 were disputed by the Unions, or at any rate not admitted by all of them," it would be the duty of the Tribunal to

decide whether there was a strike at D.C.M. as covered by issue No. 3 and whether there was a sit-down strike by S.B.M. as covered by issue No. 4". According to the Tribunal, it would not be exceeding its jurisdiction at all and would not be going beyond the scope and ambit of the reference to examine issues 3 and 4 in the above light and accordingly, the Tribunal held that the parties would be at liberty to adduce such evidence as they liked in confirmation or denial of the fact of a strike and sit-down strike regarding issues 2, 3 and 4."

The Supreme Court in paragraph (9) answered the question emphatically. The Supreme Court held as follows:

"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 word "incidental" means according to Webster's New World Dictionary:

"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on "the basis that there was a strike and there was a lock out and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a lockout. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lock-out was improper. The third issue has also a sub-issue, namely, if the lock-out was not legal, whether the workmen were entitled to wages for the period of the lock-out. Similarly, the fourth issue process on the basis that there was a sit-down-strike in the Swatantra Bharat Mills on 23rd February, 1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike."

The Supreme Court further held:

"In our opinion, the Tribunal must, in any event, look to 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 the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an Industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. u/s 10(4) of the Act it is not competent to the Tribunal to entertain such a question.

(19) In our opinion, therefore, the Tribunal had to examine issues 3 and 4 on the basis that there was a strike at the D.C.M. unit and a sit-down strike at Swatantra Bharat Mills and that there was a lock-out declared with regard to the former as stated in the third term of reference. It was for the Tribunal to examine the evidence only on the question as to whether the strikes were justified and legal, it then had to come to its decision as to whether the workmen were entitled to the wages for the period of the lock-out in the Delhi Cloth Mills and for the period of the sit down strike at the Swatantra Bharat Mills."

15. Various other decisions were also cited at the Bar to show that there was a presumption in favour of the reference. The learned Counsel for the petitioner-union relied on the Judgment reported in Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, AND The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others, , National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another, .

16. Learned Counsel for the third respondent Mr. S.V. Shastri, submitted that the Tribunal has every power and authority to frame such issues as is necessary on the pleadings made available to it by the contesting parties. He also submitted that the framing of such issues cannot be a subject matter of Writ Petition since the Labour Court has the necessary jurisdiction and power to frame issues on the basis of the pleadings. He further submitted that the framing of an issue does not change the scope of reference. Learned Counsel also submitted that Manipal Printers & Publishers (P.) Ltd and Manipal Power Press are two independent legal establishments having their own existence in the eye of law. It was further submitted that before the Tribunal he has denied the allegations that they are not paying wages in terms of the Palekar Award and Bachavat Wage Board Recommendations. He however, submitted that the employees of the third respondent are not covered by the Bachavat Wage Board Recommendations and Palekar Awards.

17. These submissions of the Learned Counsel for the III Respondent are on merits of the case. This Court is not called upon to decide the merits of the case which will undoubtedly be done by the Tribunal. All that this Court is called upon to do is to determine whether the issues framed in I.A.No. V casting the burden

on the union to prove that the Union espouses the cause of the workmen or not is justified in the facts and circumstances of the case. This is a simple question that will have to be answered in this Writ Petition.

18. The next submission of the Learned Counsel for the management was that even assuming for a moment the issues framed in I.A.No. V are not in accordance with law, the matter will have to be determined by the Tribunal at the time of the passing of the award and ought not to be interfered with at this stage.

19. Learned Counsel for the management relied on the Judgment of the Supreme Court reported in D.P. MAHESHWARI v. DELHI ADMN AIR 1984 SC 153. It is the submission of the management that the principles laid down in Re Maheshwari's case would be a clear bar for this Court to interfere at an interlocutory stage while the matter is pending before the Tribunal.

20. At first blush the submission of the Learned Counsel for the management appears to be acceptable. However, on further examination of the facts and circumstances of the case, it becomes clear that what was sought to be avoided in the Re Maheshwari's case is exactly what is being perpetuated by the management in this case.

21. It has therefore become necessary to study Re Maheshwari's case in its true perspective. In the eloquent words of the Supreme Court the spirit of Re Maheshwari's case is stated as follows:

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raised various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade, industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on

issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

22. This Court cannot improve on that philosophy. The dictum of the Supreme Court was that protracted litigation on preliminary issues should not be allowed to delay the final award.

23. In my view if the issues framed by the Tribunal is without jurisdiction on the very face of it and if the very purpose of the preliminary issues would result in dragging on the proceedings, this Court will not hesitate in setting right the wrong done to the petitioner. This Court will not permit parties to raise issues beyond the scope of the dispute. It is spirit of the *Re Maheswari*'s case that is sought to be brought into effect in this case.

24. Let us take for example that these issues in I.A.No. V putting the burden on the union to prove that they espouse the cause of the workmen were allowed to stand. What then will be the consequences? The enquiry instead of focussing itself on the reference will get derailed on an extraneous issue that is beyond the scope of the reference. In my opinion it will be the very negation of the spirit and meaning of the *Re Maheshwari*'s case.

25. It is common ground that if this preliminary issues are taken up for an enquiry, it will take months if not years to complete and will undoubtedly scuttle the process of enquiry on the main dispute. Should not the Court put an end to this vexatious litigation carried on by the management?

26. Let me chronologically deal with the facts of the case before me. The order of reference by the Government of Karnataka was on 10.1.1983. A preliminary objection was raised by the management regarding the validity of the reference on the ground that the union had no representative capacity. On 26.09.1988 the Tribunal passed an order holding that the petitioner-union validly espouse the cause of the workmen. Thereafter, the petitioner-union filed an application to bring on record the third respondent. This simple application was not disposed of for a long time. The petitioner had to file a Writ Petition seeking directions of the High Court to direct the Tribunal to dispose of the impleading petition. An order

was passed by this Court in W.P.No. 9430/94 directing the Tribunal to dispose of the matter within three months. On the 7th of October, 1994, this Court passed the following order:

"Taking into consideration that the dispute has been pending for over ten years, I pass the following interim order:

The first respondent is directed to dispose of the reference No. 6/83 renumbered as 271/90 within three months hereof holding its sitting at Mysore."

Subsequently, the Tribunal, impleaded the third respondent.

27. This order of the Industrial Tribunal was again challenged by the third respondent in W.P.No. 4757/95. This Court disposed of W.P.No. 4757/97 on 28th of September 1995. It is also clear that petition implead the third respondent was made on 21.2.1991 itself. The third respondent also entered appearance in 1991.

28. It is in these circumstances that an application was filed by the third respondent on 30.9.1995 to frame additional issues and this was treated as I.A.No. V by the Tribunal. Ultimately the Tribunal passed an order on I.A.No. V on the 13th December, 1995.

29. It is important to remember that the reference is of 10.1.1983 and the order on I.A.No. V was on 13.12.1995. It has taken over 12 years between the date of reference and the order passed by the Tribunal on I.A.No. V. And yet no end is in sight with respect to the adjudication of the dispute.

30. The submission of the Learned Counsel for the petitioner union is that to allow the issues in I.A.No. V to stand would cast an unbearable burden on the petitioner union to start the case all over again, after a lapse of nearly 13 years.

31. Mr. Narasimhan, Learned Senior Counsel also submitted that if the issues framed in I.A.No. V are vexatious and outside the scope of the dispute this Court is bound to set aside the order on I.A.No. V. It is also submitted that the issues in I.A.No. V are contrary to law as laid down by the Supreme Court and to pursue with the enquiry on the issue would amount to an abuse of the process of law.

32. It cannot be forgotten that the evidence to be let in on issue No. V if allowed to stand would tantamount to rehearing the entire case. The burden will be shifted on the union to once again to prove that they espouse the cause of the workmen. This exercise has already been done with respect to the second respondent. Such a course could only derail the real issue which is only to adjudicate the dispute. When it is established that the issues raised in I.A.No. V are contrary to law, this Court would not hesitate to strike it down. It is stated that the enquiry has already begun and it would not be permissible at this stage to require the petitioner-union to once again satisfy the Court that the petitioner-union espouses the cause of the workmen. That would result in inordinate delay of the adjudication of the dispute.

33. This Court will not at this stage deal with the merits of the case as that will be done by the Tribunal at the enquiry. All contentions advanced by the management as well as by the petitioner union are left open.

Consequently the order of the Tribunal dated 13.12.1995 passed by the Industrial Tribunal, Mysore on I.A.No. V is set aside. The Tribunal will take up the matter and adjudicate the dispute as expeditiously as possible without reference to the issues in I.A.No. V.

34. Writ Petition is allowed.

No order as to costs.

The Industrial Tribunal, Mysore, will dispose of the dispute in reference No. 271/90 on merits without being influenced by any observations made by this Court in this order. Copy of this order shall be sent to the Industrial Tribunal, Mysore.