

Malabar Public Conveyance Vs. State Arbitration Board and ors.

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Court : Kerala

Decided On : Feb-10-1978

Reported in : (1978)IILLJ312Ker

Judge : T. Chandrasekhara Menon, J.

Appellant : Malabar Public Conveyance

Respondent : State Arbitration Board and ors.

Judgement :

T. Chandrasekhara Menon, J.

1. The petitioner a firm registered under the Partnership Act engaged in motor transport industry seeks to quash the award of the State Arbitration Board, by which it had been directed to reinstate the third respondent, Lakshmanan, in the service of the management ; the Board had further directed that as a punishment for disobedience of instructions of the management he will not be eligible for backwages from the date of his dismissal upto the date of publication of the award. The reference to the Board was under Section 10A of the Industrial Disputes Act (for short the Act), It would appear that there was a domestic enquiry into the matter and it was on the basis of the finding in the domestic enquiry that the third respondent was sent out of service.

2. The case against him was that while the 3rd respondent was a conductor in the petitioner's service, he was on duty in the petitioner's vehicle KLC 2108 conducting service on the route Tellicherry to Badagara. The checking inspector checked the vehicle on 22-5-1974 at Azhiyoor Chungam. The checking inspector found that ticket was not issued to one of the passengers who was said to be a driver of another transport company - Malabar Roadways Service. The third respondent not only refused to issue the ticket to the passenger but behaved rudely towards the checking inspector, snatched away the tickets pad and invoice from his hands. It is alleged that the checking inspector reported the incident to the petitioner. Thereupon a show-cause notice was issued to the third respondent. After he submitted his explanation, a charge memo was issued to the third respondent. The charge against him being :

(i) that he did not issue ticket to a passenger in the bus who happened to be a driver of M/s. Malabar Roadways Service.

(ii) That he behaved rudely and insolently towards Sri K. Babu who was checking the bus at that time and refused to issue the ticket, to the above passenger ; and

(iii) That he snatched away ticket pad and invoice from the hands of Sri K. Babu and has obstructed him from (doing) performing his duties.

3. The domestic enquiry was with notice to the 3rd respondent. The enquiry officer found the third respondent guilty of all the charges levelled against him and submitted his report accordingly. Accepting the findings in the report the petitioner dismissed the third respondent. 2nd respondent-union, of which the third respondent was a member raised an industrial dispute in the matter. The parties-petitioner and the 2nd respondent agreed that the matter could be referred for arbitration by the 1st respondent-State Arbitration Board-under Section 10A of the Act. Accordingly the matter came before the 1st respondent who gave the award dated 9th August 1976, which was published in the Kerala Gazette on 21st September, 1976.

4. In attacking the award the petitioner contends that the 1st respondent has proceeded on the basis that Section 11A of the Act is applicable to the reference.

It is contended that Section 11A is not applicable to an Arbitrator, but would be applicable only to disputes referred to a Labour Court, Tribunal or National Tribunal. The petitioner proceeds to contend that as Section 11A of the Act is not applicable to an arbitration before an Arbitrator, the Arbitrator has to confine his enquiry or investigation to the limits laid down by the Supreme Court in Indian Iron and Steel Company case 1958-I L.L.J. 260. The jurisdiction of the Arbitrator is to investigate whether a proper domestic enquiry has been conducted and whether the findings or conclusion of the enquiry officer is reasonable and possible on the evidence led before him. It is alleged that it is not open to Arbitrator to reappreciate the evidence and come to his own finding, nor is it open to the Arbitrator to take evidence himself de hors the domestic enquiry.

5. It is also contended that even where Section 11A applies, the Supreme Court has conclusively laid down that the Labour Court, Tribunal or National Tribunal should confine itself to the domestic enquiry, in the first instance and hold as a preliminary issue whether the enquiry is proper and valid. If the finding of the Tribunal is that the domestic enquiry has been properly held, then it shall not take evidence itself or reappreciate evidence led in the domestic enquiry. The statement made in the award that the management had led some evidence before it, and, therefore, it has forfeited the right to reply upon the domestic enquiry, is challenged. It is contended that the proposition is totally illegal and is not supported by any provision of the law or any decision. It is alleged that even assuming without admitting that jurisdiction of an Arbitrator is equal to the jurisdiction conferred by Section 11A, the Arbitrator is bound to consider the validity and regularity of the domestic enquiry first. If only it rejects the domestic enquiry as bad it can take evidence itself and come to its own conclusion.

6. It is pointed out that the employee concerned had admitted in the domestic enquiry as well as before the 1st respondent that he is guilty of misconduct alleged against him under charge No. 1. The punishment award by the management is justified on the basis of the admitted charge itself. It is alleged that the reasons given by the 1st respondent to interfere with the punishment are wholly irrelevant. The first reason is that the third respondent was bound to obey the directions of the trade union of which he is a member, although he was also under obligation to

obey the employer. The petitioner contends that this proposition is unsustainable in law. Because it is not part of the right of worker to deny the lawful orders of an employer and prefer a direction or instruction given by the union. It is also urged that the 2nd reason given by the 1st respondent, viz., that after the incident, and after a strike the management agreed to extend the concession of free travel to the employees of Malabar Roadways service is no valid consideration for being relied upon. This subsequent event, it is argued is irrelevant in judging whether the refusal of the third respondent to issue ticket to an employee of the Malabar Roadways service contrary to the express instructions of the employer is proper or not. It is contended that it is not open to an employee or trade union to decide whether the free travel facilities should be accorded to the employees of another concern, even if the individuals constituting the two concerns are common.

7. The third respondent has filed a detailed counter-affidavit. According to the counter-affidavit there is no basis for the petitioner's contentions. It is contended that the decision of the Supreme Court which requires the giving of a preliminary finding on the validity of domestic enquiry, is not applicable to proceedings before an Arbitrator. It is said that an Arbitrator appointed under Section 10A of the Act is not confined to the limits laid down by the Supreme Court in 1958-I L.L.J. 260. If it is assumed that the principles laid down in the said case would circumscribe the power of an Arbitrator, there is no reason why the enlargement of jurisdiction under Section 11A should also not apply to him.

8. After hearing the counsel on both sides, I am of the view that the petitioner's contentions are based on misconception of the powers and duties of an Arbitrator to whom there has been a voluntary reference by the parties concerned, under Section 10A of the Act. It may be noted that the voluntary reference of disputes to arbitration, where any industrial dispute exists should be at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal by a written agreement. The form of the agreement referring the matter under Section 10A of the Act to arbitration would indicate that the parties should agree that the majority decision of the Arbitrators would be binding on it. Though to a certain extent the Arbitrators under Section 10A would constitute quasi statutory status, to a great extent their powers and duties are that of ordinary

Arbitrators to whom the dispute is referred on the agreement of parties.

9. No doubt, this Court under Article 226 could examine the decision of the Arbitrators within certain limits in view of the fact that the Arbitrators appointed under Section 10A are clothed with certain powers, their procedure is regulated by certain rules and the award pronounced by them is given statutory and binding character for a specified period. It had been contended in certain cases that the reference in the case being one under Section 10A of the Act, based on the voluntary submission of the Management and the workers to abide by the Arbitrator's award, the Arbitrator thereafter functions only as a non-statutory body and his decision cannot be made the subject-matter of a writ proceeding under Article 226 of the Constitution. In certain other cases a view had been taken that the decisions' of the Arbitrator in a reference under Section 10A of the Act are quasi-judicial decisions and that the award of the Arbitrator should ex facie show the reasons on which it is based and if the Arbitrator has exercised uncontrolled or arbitrary power to make the award completely bare of reasons, the High Court can interfere under Article 226 of the Constitution. But as the Madras High Court pointed out in *Coimbatore Salem Transports v. Their Workmen* 1967-II L.L.J. 120, 'between those two views, there seems to be an intermediate view laid down by the Supreme Court in *Engineering Mazdoor Sabha v. Hind Cycles* 1962-II L.L.J. 760'. The Supreme Court in that case was dealing with the question whether an Arbitrator appointed under Section 10A of the Act would be Tribunal within the meaning of Article 136 of the Constitution with a right of appeal to the Supreme Court against the award. The Supreme Court came to the conclusion that he is not such a Tribunal and that no appeal under Article 136 would lie, but, at the same time, it recognised-

(1) that the decision of an Arbitrator under Section 10A of the Industrial Disputes Act are quasi-judicial decisions, and

(2) from the circumstance that the Arbitrator appointed under Section 10A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given statutory and binding character for a specified period, it may perhaps be possible to describe him, in a loose sense as a statutory

Arbitrator.

10. Though this Court may have powers to go into the decisions of Arbitrators under Section 10A that power is limited and would be only to the extent of finding out whether there are errors of law apparent on the face of the award errors of a like nature which might entitle interference by the competent civil Court in regard to an award made by a private Arbitrator. In regard to the principle enunciated with regard to the power of the Court under the common law in the matter of interference with the Arbitrator's award, what constitutes error of law on the face of award as stated in Halsbury's laws of England has been accepted with approval in the matter of consideration of award of an Arbitrator under Section 10A of the Act by the Supreme Court in *Rohtas Industries Ltd, v. Rohtas Industries Staff Union* : (1976)ILLJ274SC The relevant passage, quoted at page 90 reads:

Error of law on the face of award : An Arbitrator's award may be set aside for error of law appearing on the face of it, though the jurisdiction is not lightly to be exercised-The jurisdiction is one that exists at common law independently of statute. In order to be a ground for setting aside the award, an error in law on the face of the award must be such that there can be found in the award, or in a document actually incorporated with it, some legal proposition which is the basis of the award and which is erroneous..Where the question referred to arbitration is a question of construction, which is, generally speaking, a question of law, the arbitrator's decision cannot be set aside only because the Court would itself have come to a different conclusion, but if it appears on the face of the award that the arbitrator has proceeded illegally as for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error of law which may be ground for setting aside the award .

Adopting this as sound statement of the law, the Supreme Court stated, ' not that English law binds us but that the jurisprudence of judicial review in this branch is substantially common for Indian and Anglo-American systems and so Halsbury has considerable persuasive value. The wider emergence of common canons of judicial review is a welcome trend towards a one-world public law'. The Supreme

Court also points out as to what extent the Court should invoke the high prerogative under Article 226 in the case of consideration of an award passed under Section 10A. The court said ;

that depends. We will examine the grounds on which the high Court has, in the present case exercised a portion of the award as illegal, keeping in mind the settled rules governing judicial review of private arbitrator's awards. Suffice it to say, an award under Section 10A is not only not invulnerable but mere sensitively susceptible to the writ lancet being a quasi-statutory body's decision. Admittedly, such an award can be set up if an apparent error of law stains its face. The distinction, in this area, between a private award and one under Section 10A is fine, but real.

11. However, this will not make a difference in the consideration of the question in this case. It might be noted that the Act itself proceeds on the basis that there is vital distinction between the authority under the Act like Courts of enquiry, Labour Court and the Tribunal and an Arbitrator appointed under Section 10A. Section 11 which deals with procedure and powers of conciliation officers, Boards, Courts and Tribunals, states that subject to any rules that may be made in this behalf an Arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the Arbitrator or other authority concerned may think fit. In the matter of powers, the powers that are conferred on the Labour Court and Tribunal are not conferred on the Arbitrator functioning under Section 10A. Though the provisions in the Arbitration Act, 1940 will not apply to Arbitrators under Section 10A because of the specific statutory provisions in Section 10A(5), I do not think the powers of the Arbitrators would be much different from that of the private Arbitrators, They can certainly look into the evidence and come to their own conclusion as Judges to whom the parties have voluntarily submitted their dispute. The limitations on the powers of the Labour Court and Industrial Tribunals that have been pointed out by the Supreme Court in various decisions may not strictly apply to the Arbitrators as such.

12. When we look into the award it is difficult to find any error of law apparent on the face of the record. On the basis of the evidence before it the Arbitrators have

come to a conclusion. It is not correct to state as the petitioner has contended that the domestic enquiry has not been taken into consideration by the Arbitrators. The evidence given by the driver of the bus before the domestic enquiry officer is referred to by the Arbitrator. But then it is pointed out that his statement would indicate that he has not seen the incident. The evidence of the checking inspector who was examined before the Arbitrators themselves has been referred to in detail. The Arbitrators thought that in the circumstances it would be more proper to rely on the evidence of the passenger in the bus at the time of the alleged incident, who had been examined before the Arbitrators. This Court cannot go into the assessment of the evidence as such.

13. In regard to the question of application of Section 11A of the Act, as I stated earlier the scheme of the Act would indicate that the powers of the Arbitrator are different from that of the Labour Court, Tribunal, etc. The restricted powers of the Industrial Tribunal in the matter of reappraisal of evidence, etc., pointed out in the decision of the Supreme Court in Indian Iron & Steel Company case, (1958) S.C. 130, may not be imported to the Arbitrators functioning under Section 10A. Their powers are as wide as that of Arbitrators appointed under the Arbitration Act. That is why when Section 11A was introduced an Arbitrator functioning under Section 10A was not specifically included therein. Otherwise, it is rather difficult to assume that the Legislature did not think it fit to confer on the Arbitrators also the right to reappraise the evidence. Because the very purpose of introducing Section 11A was to give as wide a right as an Appellate Authority to Tribunals before whom the decisions of domestic forum would be put forward as justifying the action of the management. The section was introduced on the recommendation of the international labour organisation as has been pointed out by the Supreme Court in Workmen of Ft. v. Management : (1973)ILLJ278SC . The Arbitrators had already that power in the nature of the jurisdiction that had been conferred on them. I find considerable force in the contention raised on behalf of the third respondent that if it is assumed that the principles laid down in the Indian Iron and Steel Company would circumscribe the power of an Arbitrator, there is no reason why the enlargement of jurisdiction under Section 11A should also not apply to him.

14. In regard to the interference with the punishment imposed, by the Arbitrators, I think that they have given valid reasons. I would just quote here paras 21 to 23 from the Award :

There is no denying the fact that conductor Sri C.P. Lakshmanan's action in not issuing ticket to the passenger was in violation of the instructions issued by the management. To this extent, his action may be held to be a dereliction of duty on his part. But it has to be borne in mind that as a member of a trade union he has also a duty to obey the instructions issued by his union, in a case where the unions demand related to continuance of a long standing benefit enjoyed by the workers. The fact also remains that subsequently by the management. There is also no case for the management that Shri C.P. Lakshmanan as collected the bus fare from the passenger and then failed to issue a ticket with a view to misappropriating the amount. Thus there is no charge of mens rea on the part of Sri C.P. Lakshmanan.

15. In view of the above facts and circumstances the board is convinced that the punishment of dismissal is too severe and has to be set aside and that a lenient punishment will meet the ends of justice.

16. In the result, the dismissal of Sri C.P. Lakshmanan is set aside. He will be reinstated in the service of the management. But as a punishment for disobedience of instructions of the management he will not be eligible for back wages from the date of his dismissal upto the date of publication of this award.

17. The Arbitrators have based the decision of very relevant factors. There are no error of law apparent on the face of the record justifying this Court's interference. The O.P. is dismissed ; but I make no order as to costs.