

Management of Tvs Suzuki Ltd. Vs. State of Tamil Nadu

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Court : Chennai

Decided On : Feb-21-1992

Reported in : [1992(65)FLR971]; (1993)ILLJ855Mad; (1992)IIMLJ432

Judge : K.S. Bakthavatsalam, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10, 10(1), 18 and 19; [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 10546/1990

Appellant : Management of Tvs Suzuki Ltd.

Respondent : State of Tamil Nadu

Advocate for Def. : P. Gunaraj, Addl. Govt. Pleader for Respondent No. 1 and ;A.S. Shanmughasundaram, Adv. for Respondent No. 3

Advocate for Pet/Ap. : A.R. Ramanathan, Adv.

Disposition : Petition dismissed

Judgement :

K.S. Bakthavatsalam, J.

1. The short question that has to be considered in this case is whether a reference under Section 10 of the Industrial Disputes Act by the Government is valid, when

the charter of demands is raised by a minority Union, according to the petitioner-management.

2. Mr. A. R. Ramanathan, learned counsel for the petitioner- Management, took me to the various settlements entered into between the recognised Union INTUC on February 12, 1988 and May 12, 1989 with regard to certain items on which demands were raised by the 3rd respondent-Union. The dispute in this case is with regard to the bonus for 1987-1988, supply of two uniforms and payment of washing allowance. According to the learned counsel Mr. A.R. Ramanathan, the 3rd respondent Union did not raise the question of bonus in that charter of demands and as such the Government has no jurisdiction to refer the dispute under Section 10 of the Act. With regard to the other two items, the learned counsel contends that they are covered by valid settlement made under Section 18(1) of the Act entered into between the Union INTUC, which according to him is the majority Union in the petitioner-management. Learned counsel states that the Government has not applied its mind and there is no interim dispute existing and the Government has no jurisdiction to refer the dispute at all under Section 10 of the Act.

3. Learned counsel for the 3rd respondent Union states that these are matters to be decided by the Industrial Tribunal and when once reference is made under Section 10, the petitioner can very well agitate all these points before the Tribunal and this Court under Article 226 of the [Constitution of India](#) need not enter into the merits of the case, especially when it is necessary to examine the factual position. According to the learned counsel for the 3rd respondent what all accepted was only ex gratia payment and not bonus and as such, it cannot be said that bonus was not raised as one of the demands. With regard to other items which have been referred, the learned counsel for the 3rd respondent states that the 3rd respondent-union was not a party to it and so, it is not binding on them.

4. Though no counter-affidavit is filed, learned Additional Government Pleader, on instructions, states that the settlement effected between the petitioner and the T.V.S. Suzuki Employees Union was under Section 18(1) of the Act and the same will be binding on the 3rd respondent. It is stated by the learned Additional

Government Pleader that the 3rd respondent raised industrial dispute containing various demands, as contemplated under Section 2(k) of the Industrial Disputes Act. Though various demands are raised, the Government thought fit to refer only three issues only viz., payment of bonus for the year 1987-88, supply of two uniforms and payment of washing allowance. Section 18(1) of the Industrial Disputes Act will bind the parties who are signatories and will not bind those who have not signed the settlement.

5. With regard to the contention raised by Mr. A.R. Ramanathan, learned counsel for the petitioner, that there was no demand for bonus, the learned Additional Government Pleader stated that the Union demanded 30% bonus and the management's reply was that they could not pay any bonus due to loss sustained. It is stated by the Additional Government Pleader that the issue raised is different from the one covered by the settlement and there is every justification in referring the dispute to arbitration under Section 10 of the Act. It is also stated by the learned Additional Government Pleader that though there may be a settlement on the issue relating to ex gratia payment it cannot be termed as bonus, as bonus is entirely a different one from ex gratia payment. It is also stated by the Additional Government Pleader that there is no bar or ban on a Union, which is not a party to a settlement, for raising a dispute on the issues covered by a settlement.

6. Considering the contentions raised by the learned counsel for the petitioner the 3rd respondent and the learned Additional Government Advocate, I am of the view that there are no merits in this writ petition. It is well settled that when an Industrial Dispute is raised what is the power of the Government under Section 10(1) of the Act has been succinctly put in *Shaw Wallace Company v. State of Tamil Nadu* represented by Commissioner and Secretary, Labour Department and Ors., : (1988)ILLJ177Mad . If the principles laid down by the Division Bench of this Court are applied to the facts of this case, I do not think, the Government can deny reference of the matter for adjudication under Section 10(1) of the Act. The Division Bench has held that the Government would normally refer the dispute for adjudication and can refuse reference only on certain grounds. Though the grounds stated by the Division Bench cannot be said to be exhaustive, I am of the view that on the facts of this case, the Government cannot refuse to refer the

dispute. Mr. A.R. Ramantahan, learned counsel, referred me to a judgment of the Division Bench of this Court reported in Management of Binny Ltd (B. and C. Mills) v. the Government of Tamil Nadu and Ors. : (1989)ILLJ180Mad , for the proposition that a settlement under the Act will bind the parties and no reference can be made under Section 10 of the Act. I do not think that the Division Bench has decided the proposition as to what will be the provision when another union makes a demand when the settlement was entered into with a particular Union. What was decided by the Division Bench is if there is subsisting settlement under Sections 18 and 19 on the date of reference, the appropriate Government has no competence to make a reference. I do not think that this is the case here. There is no subsisting settlement between the 3rd respondent-union and the petitioner. It is true that there is settlement with another union. But in my view that will not bind the 3rd respondent-union on the facts and circumstances of this case.

7. The other contention of Mr. A.R. Ramanathan is that some of the members of the 3rd respondent Union who have accepted the benefit under the settlement by turning round has raised an Industrial Dispute now. In other words, learned counsel contends that some of the members of the 3rd respondent are estopped from doing so and the Government could have taken note of that and decided that there is no dispute at all to be referred. I do not agree. This is a matter of evidence before the tribunal which has to see whether the members of the Union accepted the benefit or how many members accepted the benefit and was there any dispute at all after evidence is adduced before it.

8. Though Mr. A.R. Ramanathan tries to produce before me a xerox copy of the accounts to show that some of the members of the 3rd respondent had the benefit, I do not think that this court sitting under Article 226 of the [Constitution of India](#) can scrutinize it, as an appellate forum. It is well settled that the order of the Government under Section 10(1) of the Act is an administrative order and on the facts of this case, I do not think that the order can be assailed on any ground. It is open to the petitioner to raise all the contentions before the Tribunal with regard to the validity of the reference also on the ground that no industrial dispute exists. With this observation, this writ petition shall stand dismissed. No costs.

