

S. Loganathan and anr. Vs. Special Officer of the Management of the T.U.C.S. Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/801744

Court : Chennai

Decided On : Jan-19-1984

Reported in : (1984)2MLJ245

Appellant : S. Loganathan and anr.

Respondent : Special Officer of the Management of the T.U.C.S. Ltd. and anr.

Advocate for Def. : Mr. Dwaraganathan

Judgement :

ORDER

K. Venkataswami, J.

1. Both the petitioners in the above writ petitions challenge the order of the second respondent, confirming the order of the first respondent removing the petitioners from the services of the first respondent.

2. It is seen from the papers that originally a single writ petition was filed by both the petitioners and subsequently on the objection raised by the Office, two separate writ petitions have been filed. The issue involved is common.

3. Both the petitioners were employed in the first respondent-management. The petitioner in W.P. No. 1743/82 was working as a salesman and the petitioner in W.P. No. 1744/82 was working as an attender. As a result of a surprise inspection of the Chromepet Branch of the first respondent society, certain irregularities were found out and charges were framed against the petitioners as well as against the accountant. An enquiry was conducted and after giving reasonable opportunity to the petitioners, the Enquiry Officer in his report dated 30-11-1976 found the petitioners and the accountant guilty and responsible for the stock deficit. Based on the report of the Enquiry Officer, the petitioners were dismissed from service on 18-1-1977. Thereafter, it appears, the T.U.C.S. Employees' Union raised a dispute regarding the termination and a charter of demands. As their demand was not conceded, the employees struck work effective from 1-7-1977. The Deputy Commissioner of Labour I, Madras took up the conciliation proceedings from 28-6-1977 and on 2-7-1977, a settlement was arrived at under Section 12(3) of the Industrial Disputes Act. As a result of the settlement under Section 12(3) of the Act, as stated above, among other things, the matter relating to the dismissal of the petitioners was referred to the Commissioner of Labour and the parties agreed that the decision of the Commissioner of Labour shall be final and binding on both the parties. The second respondent by his order dated 21-3-1978 while giving relief to several of the persons involved in the matter has held as follows so far as the petitioners are concerned:

In respect of the following other claimants I find that the involvement of these persons in severe loss either by money or by goods or by irregular issue of things or sale of controlled commodities in the open market stands proved... 8. S. Loganathan, 9. D. Nambipillai.

On that basis, the order of removal already passed we allowed to stand. It is against this order, the present writ petitions had been filed.

4. Miss Anna Mathew, learned Counsel for the petitioners submitted that the proceedings before the second respondent as a result of settlement under Section 12(3) of the Industrial Disputes Act must be deemed to be an arbitration under Section 10-A of the Industrial Disputes Act. If that be so, the requirements under

Section 10-A(3) have not been followed and the Award has not been published and therefore, the award is vitiated for non-compliance of Section 10-A(3) of the Act. It is next contended by the learned Counsel for the petitioners that the second respondent if deemed as an arbitrator for the purpose of Section 10-A should have gone into the merits of the case in detail and should have exercised the powers under Section 11-A of the Industrial Disputes Act with reference to the punishment aspect as well. As the second respondent failed to do so, the Award is vitiated and liable to be quashed.

5. Mr.Dwaraganathan, learned Counsel appearing for the first respondent submitted that the proceedings as a result of settlement under Section 12(3) of the Act cannot be construed as an Award under Section 10-A of the Act, that the writ petitions are liable to be dismissed on the sole ground of laches on the part of the petitioners and that the decision of the second respondent is quite in accordance with the materials placed before him and it does not suffer from any error apparent on the face of the record. It is also the contention of the learned Counsel for the respondents that the settlement under Section 12(3) of the Act is binding on all the parties and if the decision is to be set aside at the instance of the petitioners, it will affect so many other persons in whose favour, a favourable decision was given by the second respondent.

6. Mr.Dwaraganathan, next contended that before the second respondent, the Union was the party and the Union has not come by way of writ petition and on that ground as well, the writ petitions are liable to be dismissed. According to the learned Counsel for the respondents, the Industrial Disputes Act contemplates an arbitration outside Section 10-A as well and therefore, the present decision of the second respondent cannot be termed as an arbitration within the purview of Section 10-A of the Act.

7. The learned Counsel for the petitioners relied on a Full Bench decision of this Court reported in R.K. Steels v. Their Workmen (1977) 1 L.L.J. 382, to support her contention that an agreement to refer the matter to the decision of the second respondent during conciliation proceedings under Section 12(3) of the Act would amount to an agreement to refer the dispute to an arbitrator and therefore, the

Section 10-A is attracted. The facts in that case substantially are similar to the facts in the present case. V. Ramaswamy, J., speaking for the Full Bench has held as follows:

It was contended by the learned Counsel for the petitioner that the terms of settlement amounted only to an agreement to refer the dispute to arbitration within the meaning of Section 10-A. Per contra, the learned Counsel for the respondents contended that the parties did not deliberately want to avail themselves of the statutory arbitration under Section 10-A but agreed to refer the matter to informal arbitration outside Section 10-A and this is clear from the fact that the agreement was not in the form prescribed nor the procedure prescribed under Section 10-A was followed. We are unable to agree with the contention of the learned Counsel for the respondents. The dispute between the parties related to the payment of bonus and, therefore, it is an industrial dispute. An industrial dispute could be solved under the Act by a settlement in the course of conciliation proceedings under Section 12(3) or by a settlement arrived at by agreement between the parties otherwise than in the course of conciliation proceedings or by adjudication on a reference under Section 10 or by arbitration by referring the dispute to an arbitrator as provided under Section 10-A. Section 10-A(1) of the Act reads as follows:

Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, 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, refer the dispute to arbitration and the reference shall be to such person or persons (including the Presiding Officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

It is seen from the provision that at any time before the dispute has been referred under Section 10, the parties could agree to refer the dispute to arbitration. The terms of settlement arrived at during the conciliation proceedings in this case did not settle the dispute relating to bonus. Therefore, the agreement entered into by the parties on 28-2-1976 to settle the issue of bonus by leaving it to the decision of

the Assistant Commissioner of Labour did not amount to a settlement during conciliation proceedings under Section 12(3) of the Act, and it would clearly amount only to an agreement to refer the dispute to arbitration. The agreement dated 28-2-1976 refers to the Parties to the dispute, the persons representing the management, the persons representing the union, the dispute between the parties and says that the decision of the arbitrator will be final and binding on the parties. This is signed by persons representing the employers and the workmen and it is attested by the Assistant Commissioner of Labour, who is the arbitrator.

8. The learned Counsel for the petitioners also cited a Division Bench Judgment of this Court reported in *Madras Machine Tools v. Spl. Dy, Commr. of Labour* : (1979) ILLJ331Mad , to support her contention that the non-compliance of Section 10-A and Section 17-A read with Rules 26, 27 and 27-A of the Tamil Nadu Industrial Disputes Rules would render the award invalid and unenforceable. Mohan, J., speaking for the Bench, after noticing the abovesaid Full Bench Judgment has held as follows:

On a reading of Section 10-A of the Act, it appears to us that there are two stages contemplated under the said section, one is the stage of agreement and the other is the stage of award. The Mysore High Court in very categorical terms in *Workmen of Madras Woodlands Hotel v. Srinivasa Rao* (1972) 42 F.J.R. 223, has laid down that the failure to follow the procedure under Section 10-A(3) viz., the non-publication thereof would render the award invalid. Likewise is the decision in *Rasbehary Mohanty v. Presiding Officer, Labour Court* : (1974) ILLJ222Ori . The same position is derived by a reading of the decision in *K.P. Singh v. S.K. Gokhale* : (1970) ILLJ125MP . However, the Full Bench of this Court in *R.K. Steels v. Their Workmen* (1977) I L.L.J. 382, states thus:

The agreement that in the instant case the arbitration agreement was not forwarded to the Government or the other officers referred to in Sub-s.(3) of Section 10-A and that the agreement or the award also was not published in the Gazette, showed that the parties deliberately did not want to avail of the provisions of Section 10-A could not be accepted as that will amount to putting the cart before the horse. The Government comes into the picture only after the arbitration

agreement had been entered into under Section 10-A(1 and signed by the parties as required under Section 10-A(2). If once that is done there is a valid arbitration agreement, and non-compliance with the other provisions of Section 10-A or any other provision in the Act relating to publication of the Award will not invalidate or take the arbitration agreement itself outside the purview of Section 10-A.

We may at once state that the question that arose before the Full Bench was whether an arbitration award rendered under Section 10-A or the Act would be amenable to writ jurisdiction. Nevertheless, the effect of non-compliance of Section 10-A(3) came to be considered as seen from the above extract and the Full Bench seems to suggest that the non-compliance of Section 10-A(3) could not render the arbitration agreement (Emphasis supplied) invalid. Bound, as we are by the Full Bench, we will have to limit the scope of the judgment only to the stage of agreement and cannot extend it beyond its frontiers, in other words, to the domain of award. If Section 10-A(3A) is not complied with, we fail to understand how an award could ever be characterised as valid. There is an important legal consequence if Section 10-A(3A) is not complied with, that being the failure of the Government to issue a notification under Section 10-A(4A) of the Act. In other words, if there is a strike or lock-out, no notification under Section 10-A(4A) can be issued prohibiting the continuance of that strike or lock-out. In such a case, it is held that Section 10-A(3A) is not a mandatory requirement, will it not jeopardise the industrial peace and harmony and will not the Government lose its jurisdiction to issue a notification under Section 10-A (4A). For all these reasons, we restrict the scope of our judgment to the stage of agreement as regards the non-compliance with Section 10-A(3). As a matter of fact, the judgments of the other High Courts, viz., Mysore, Orissa and Madhya Pradesh, are directly in point. We, therefore, hold that having regard to the admitted fact of non-compliance with Section 10-A(3) the award is declared to be invalid. It is also admitted that there has not been any publication under Section 17-A of the Act. That being so, the award cannot be endorsed. In view of this, we allow the writ petition. However, we may observe that it will be open to the parties to take such steps as are available to them under law to make the award valid and enforceable.

9. A judgment of the Supreme Court was also pressed into service by the learned Counsel for the petitioners and that is reported in *Gujarat Steel Tubes Ltd. v. G.S.T. Mazdoor Sabha* : (1980)ILLJ137SC . This judgment is relied on to support her contention that Section 11-A applies to arbitrator and he has power to examine whether the punishment imposed is excessive or not. The following paragraphs are relied on by the learned Counsel for the petitioners:

This long excursion has become important because, once in a while social legislation which requires sharing of social philosophy between the Parliament and the Judiciary meets with its Waterloo in the higher Courts because the true role of interpretation shifts from Judge to Judge. We are clearly of the view that statutory construction which fulfils the mandate of the statute must find favour with the Judges, except where the words and the context rebel against such flexibility. We would prefer to be liberal rather than lexical when reading the meaning of industrial legislation which develops from day to day in the growing economy of India. The necessary conclusion from this discussion is that the expression 'tribunal' includes. In the statutory setting, an Arbitrator also. Contemporaneous para-legislative material may legitimately be consulted when a word of wider import and of marginal obscurity needs to be interpreted. So viewed, we are not in a 'sound-proof system' and the I.L.O. recommendation accepted by India and the objects and reasons of the amending Act leave no doubt about the sense, policy and purpose. Therefore, Section 11-A applies to the Arbitrator in the present case and he has the power to examine whether the punishment imposed in the instant case is excessive. So has the High Court, if the award suffers from a fundamental flaw.

A study of the lengthy award discloses no mention of Section 11-A, and presumably, the authority was unmindful of that provision while rendering the verdict. In a limited sense, even prior to Section 11-A, there was jurisdiction for a Labour Tribunal, including an arbitrator, to go into the punitive aspect of the Management's order. This Court has, in a catena of cases held that if a mala fide punishment is grotesquely condign or perversely harsh or glaringly discriminatory an easy inference of bad faith, unfair labour practice or victimisation arises. The wider power to examine or prescribe the correct punishment belongs to the Tribunal/ Arbitrator even under Section 11 if no enquiry (or a defective enquiry

which is bad, and, therefore, can be equated with a 'no enquiry' situation) has been held by the management. For, then, there is no extent order of guilt or punishment and the Tribunal determines it afresh. In such a virgin situation both culpability and quantification of punishment are within the jurisdiction of the Tribunal/Arbitrator. The present is such a case.

10. The relevant portion of, the decision of the second respondent relating to the petitioners has already been set out which clearly Shows that the second respondent has not applied his mind with reference to the requirements of Section 11-A of the Act. In the light of the clear pronouncements in the judgments referred to above, I have no doubt that the award of the second respondent cannot be sustained and is liable to be quashed.

11. Mr. Dwaraganathan, learned Counsel for the respondents however contended that neither the Full Bench judgment nor the judgment of the Division Bench of this Court will apply to the facts of the present case. I am unable to agree with him. According to him, there can be an arbitration outside Section 10-A(5) of the Act and any agreement in the course of settlement under Section 12(3) to refer the matter for an informal decision of a third party cannot be construed as an arbitration under Section 10-A of the Act. This contention cannot be accepted in the light of the judgments of this Court referred to above. Similarly, the contention that the petitioners have no locus standi to file these writ petitions as the union was a party before the second respondent is not tenable.

12. The other contention of the learned Counsel for the first respondent that the writ petitions are liable to be dismissed on the ground of laches also cannot be accepted. It is seen from the counter affidavit that the petitioners have filed the writ petitions on 7-11-1978 and simultaneously were trying to get relief from the higher departmental authorities and having failed in their attempts, have pursued the remedy under Art. 226 of the Constitution of India. The writ petitions having been admitted and a prima facie case has been made out, it is unjust to deny the relief merely on the ground of laches.

13. On the other point raised by the learned Counsel for the first respondent, namely, that the decision of the second respondent covers not only the petitioners

but several other persons in whose favour a favourable decision was given and therefore if the award is set aside, it will affect those persons, I have to point out that the relief asked for by the petitioners is to set aside the award in so far as the petitioners in each of the cases are concerned. Therefore, the setting aside of the award will be with reference to the petitioners alone.

14. In the result, the writ petitions are allowed and the award of the second respondent is set aside in so far as the petitioners are concerned and the matters are remitted to the second respondent for fresh disposal in accordance with law. There will be no order as to costs.

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