Shellac Industries, Ltd. Vs. their workmen (by Shellac Industries Workers' Union)

Shellac Industries, Ltd. Vs. their workmen (by Shellac Industries Workers' Union)

SooperKanoon Citation : sooperkanoon.com/872636

Court : Kolkata

Decided On : Dec-16-1964

Reported in : (1967)ILLJ492Cal

Judge : S. Datta and ;R.N. Dutt, JJ.

Appellant : Shellac Industries, Ltd.

Respondent : their workmen (by Shellac Industries Workers' Union)

Judgement :

S. Datta, J.

1. This is a rule directed against the award of the seventh industrial tribunal, West Bengal, arising out of a dispute between the workers of the petitioner-company represented by its union, the Shellac Industries Workers' Union and the said company, Shellac Industries Ltd.

2. There was a dispute between the workers and the company which was settled through the Intervention of the Labour Department, Government of West Bengal. The terms of settlement are recorded in a memorandum dated 14 October 1958. The terms of settlement did not work oat satisfactorily. On 21 March 1959, the company closed down its factory by declaring a lookout.

3. On 16 April 1959, the Government of West Bengal, by its Labour Department Order No. 1479/IR/IR/II-405/58, dated 16 April 1959, referred the following issue as a dispute for adjudication to the first labour court, Government of West Bengal:

What relief, if any, the workman are entitled to for the lockout period from 21 March 1959

4. Thereafter, the company closed the workings of the factory permanently by notices dated 24 April 1959 and paid compensation to the workers. On 3 July 1959, the company leased out its factory to Ramkumar Kejriwala.

5. The trade union of the company filed its statement before the said first labour court. On 21 June 1960, when the reference was pending before the first Industrial tribunal, the State of West Bengal constituted the seventh industrial tribunal under notification No. 3115/IR/IR/3A-6/59.

6. On 11 July 1960, the said first industrial labour court constituted on 5 April 1957, was abolished by notification No. 3508/IR/IR/3A-6/59.

7. On 19 July 1960, the Government of West Bengal, Labour Department, issued a notification wherein they stated, inter alia, that an Industrial dispute exists, that the dispute was referred to the first labour court for adjudication, that the first labour court was replaced by the seventh industrial tribunal constituted under the notification dated 21 June 1960, that the first industrial tribunal was abolished by a notification dated 11 July 1960 and then recited as follows:

Now, therefore, in exercise of the power conferred by Section 10(1), Sub-clause (d) of the Industrial Disputes Act, 1947 (14 of 1947), the Government is pleased to refer to the seventh Industrial tribunal constituted under notification No. 3115/IR/1R/3A-6/59, dated 21 June 1960, the proceeding of the industrial disputes between the said company and their workmen relating to the matters specified in the schedule below for adjudication in supersession of the orders contained in Order No. 1479/IR/IR/IIL-405/ 58, dated 16 April 1959, referring the said dispute to the first labour court. The said seventh industrial tribunal shall, for this purpose, meet at such places and on such dates as it may direct.

Schedule 1

What relief, if any, the workmen are entitled to for the lookout period from 21 March 1959

8. Thereafter, on 20 July 1961, the seventh industrial tribunal gave an award in favour of the workers. The company being aggrieved by the said order made the application under Article 227 of the Constitution.

9. Sri Sen, learned advocate for the applicant-company, submitted that the State was not competent to supersede the prior order of reference dated 16 April 1959 to the first labour court and consequently the reference under Section 10(1)(d) of the very same dispute to the seventh industrial tribunal was illegal and without jurisdiction. In this connexion, he strongly relied upon the case of State of Bihar v. D.N. Ganguli and Ors. 1958-II L.L.J. 634.

10. At the outset, it may be noticed that the notification dated 11 July 1960, was not made under Section 33B which enables the State Government to withdraw a pending proceeding from one industrial tribunal and transfer the same to another industrial tribunal for disposal, but was made under Section 10(1), Sub-clause (d), on the footing that the prior reference to the first tribunal was dead and non-existent. It may be further noticed that the said notification or order could not have been purported to be made under Section 33B, for according to the position taken by the State Government, the disputes could not have been withdrawn from the first tribunal for it had been already abolished and hence it could not have been transferred to the seventh tribunal.

11. It is now necessary to turn to the case in 1968-II L.L.J. 634 (vide supra).

12. In the case of D.N. Ganguli 1959-II L.L.J. 634 (vide supra), the State Government referred by a notification, the dispute of 31 workers to an industrial tribunal consisting of one Sri Ali Hassan. Tnereaftar, the State Government referred a similar dispute with another 29 workers to the Dame tribunal consisting of Sri Ali Hassan:

While the proceedings in respect of the two references which had been consolidated by the tribunal were pending before it had made some progress, the Government of Bihar issued a third notification No. III/ DI. 1601/55-L-13028 on 17 September 1955 by which it purported to suparaede the two earlier notifications, to combine the said two disputes into one dispute, to implead the two sets of workmen involved in the two said disputes together, to add the Bata Mazdoor Union to the dispute and to refer it to the adjudication of the Industrial tribunal of Sri Ali Hassan as the sole member.

The tribunal on receipt of the third notification closed the two earlier references. The question for consideration of the Supreme Court was whether the order of supersession made by the third notification was valid. In those facts, the Supreme Court held:

Where an industrial dispute has been referred to a tribunal for adjudication by the appropriate Government under Section 10(1)(d) of the Industrial Disputes Act, 1947, the said Government cannot supersede the reference pending adjudication before the tribunal constituted under it.

13. In the present case, however, there has been abolition of the tribunal and thereafter a reference under Section 10(1)(d) of the Act, of the same dispute, was made to another existing tribunal in supersession of the earlier order of reference.

14. Hence, it is not a mere case of an order of supersession or cancellation of the prior order of reference, when the earlier tribunal to which the reference was made was in existence. It is a case of abolition of the earlier tribunal or patting an end to it and then an order of reference under Section 10(1)(d) to another tribunal.

15. Therefore, D.N. Ganguli case 1958-II L.L.J. 634 (vide supra) cannot bo decisive.

16. In my opinion, the primary question in this case is whether the State Government by its executive act can abolish an industrial tribunal constituted by it under Section 7, after the State had referred an industrial dispute under Section 10(1)(d) to the tribunal for its decision.

17. Section 7 confers power upon the State Government to constitute an Industrial tribunal. Section 8 gives power to the State Government to fill up vacancies in the office of chairman or any other member of the board. Section 15 imposes a duty upon the tribunal to hear the matter referred to it expeditiously under Section 10 and make an award. Section 33B however enables the State Government to withdraw from any labour court or tribunal any ponding proceeding and transfer the same disputes or dispute for hearing to another labour court or tribunal for disposal ' either de nova or from the stage at which it was so transferred.'

18. Hence, the industrial tribunal continues to exist till an award is made subject to the possibility of intervention on the grounds mentioned in Sections 8 and 33B and consequently there is no express power in the State Government to abolish a tribunal when a dispute is referred to it under Section 10(1)(d) till it gives an award.

19. The next question for consideration is whether in the context or the scheme of the Act and/or its provisions Section 21 of the General Clauses Act can enable the State to abolish a tribunal for it is the authority which had constituted it.

20. It is patent from the scheme of the Act that once a reference is made to a tribunal, the tribunal is charged under Section 15 of the Act with the duty of holding its proceedings expeditiously and submit its award to the appropriate Government. Once the award is made it has to be published under Section 17 and it becomes enforceable on the expiry of thirty days from the dale of its publication under Section 17. In certain cases, the State is given power to reject or modify the award. An award made by the tribunal should ordinarily remain in operation for a period of one year. This period may be curtailed or extended by the State.

21. It will be noticed that the State does not come into the picture once a reference is made until the tribunal submits its award to the appropriate Government except when Sections 8 and 33B come into play. Sections 8 and 33B impliedly suggest that there are no other grounds for intervention by the State during the progress of the reference. There-fore, in the intervening period from the time of the commencement of the reference till the making of the award, the tribunal proceeds with the reference without interference and direction from the State,

22. Therefore, in my opinion, there is no room even by implication for the application of Section 21 of the General Clauses Act in the scheme of the Industrial Disputes Act, 1947.

23. The scheme of the Act with particular reference to Section 10 has been considered elaborately by the Supreme Court in 1958-II L.L.J. 634 (vide supra). There, it was held, that Section 21 of the General Clauses Act could not be taken recourse to in the context of the Act. Therefore, though the case of D. N. Ganguli 1958-II L.L.J. 634 (vide supra) does not deal with the precise point before us, namely, the right of the State Government to invoke Section 21 of the General Clauses Act and cancel or supersede the order of constitution of a tribunal made under Section 7, the pronouncement made therein do generally support the view that the Act is self-contained and the scheme leaves no room for the application of Section 21 of the General Clauses Act.

24. Hence, a tribunal cannot be abolished merely because the State Government chooses to put, an end to it when a reference is pending before it, for the State cannot do indirectly under the guise of an order of supersession, what is not permissible to it expressly or impliedly under the Act. Hence, in my view, in law the State was incompetent and had no jurisdiction to abolish the first tribunal and thereafter refer the same dispute to the seventh tribunal and consequently the reference of the very same dispute under Section 10(1)(d) to the seventh industrial tribunal was clearly illegal and without jurisdiction and accordingly the award of the seventh industrial tribunal la without jurisdiction and void.

25. Sri Datta, learned advocate appealing for the respondent, contended that such a construction of the Act would manifestly defeat the object of the Industrial Disputes Act which was enacted for the benefit of the workers and lead to injustice to his poor clients. In my opinion, the above conclusion may lead to unfortunate results. This, however, cannot be a sufficient consideration for giving a beneficial construction; if the law on the point as indicated above is the correct law then the law must take its own course.

26. Sri Datta further submitted that this order dated 19 July 1960, may be read as an order under Section 7 followed by an order under Section 10 of the Act.

27. In this connexion the said decision in Mlneiva Mills, Ltd., Bangalore v. Workers of Minerva Mills 1954-I L.L.J. 119 was relied upon. In that, case the Government of Mysore constituted a tribunal under Section 7 for a period of one year consisting of a chairman and two members for the adjudication of industrial disputes in accordance with the provisions of the Act. The tribunal had framed issues in respect of one of the disputes but had not proceeded to record evidence. At this stage, the Government by another notification constituted another tribunal on 27 June 1952, for adjudication of the very same disputes and acting under Section 10(1)(c) of the Act referred the dispute pending before the first tribunal to the newly-constituted tribunal.

28. Their lordships held that the Government had the power to appoint a fresh tribunal under Section 7 as the life of the first tribunal automatically came to an end by affliction of time. It also observed that

no question of the vacancy in this office really arose and it was not a case falling under Sub-clause (2) of Section 8 but the situation that arose fell within the ambit of Section 7.

Therefore, the Court held that the second notification was made under Section 10 and the reference to Section 8 and to a vacancy la the notification are in the nature of surplus and are the result of confused thinking on the part of those responsible for this notification and in the end having regard to the reference to Section 10(1)(c) in the notification or order their lordships held that the fresh tribunal was constituted in accordance with law. In Minerva Mills, Ltd. 1954-I L.L.J. 119 (vide supra) the question of pending reference or abolition of a labour court did not arise though in that case a tribunal had come to a natural death by effluxion of time. Hence the Minerva Milts, Ltd. case 1954-I L.L.J. 119 (vide supra) can be easily distinguished.

29. In this connexion reliance was placed on the observations of the Supreme Court in 1958-II L.L.J. 634 (vide supra) with reference to Minerva Mills case 1954-I L.L.J. 119 (vide supra) as follows at p. 642:.Strictly speaking there was no occasion to withdraw any dispute from the first tribunal; the first tribunal has ceased to exist; and so there was no tribunal which could deal with the remaining

disputes already referred under Section 10(1). That is why the Government purported to appoint a second tribunal to deal with the said disputes. In our opinion, the decision in Minerva Mills, Ltd., case 1954-I L.L.J. 119 (vide supra) cannot be cited in support of the proposition that the appellant has power to cancel the order of reference made by it under Section 10(1).

30. The Supreme Court in 1958-II L.L.J. 634 (vide supra) again when dealing with the case of Iyappan Mills (Private), Ltd., Trichur v. State of Travancore-Cochin 1958-I L.L.J. 50 observed at p. 643:.is not of much assistance because in this case the learned Judges appear to have taken the view that the first tribunal before which the industrial dispute was pending had ceased to exist at the material time when the dispute was referred by the local Government for adjudication to the second tribunal. If that be the true position the conclusion of the learned Judges would be supported by the decision of this Court in Minerva Mills, Ltd., case 1954-I L.L.J. 119 (vide supra).

31. Therefore, prima facie, the observations of the Supreme Court apparently support the contention advanced on behalf of the workers for it may be said that upon the abolition of the tribunal, it ceased to exist.

32. These observations as to cessation of existence when read with the fact that in both cases the original tribunal had ceased to exist by effluxion of time, do not and cannot help the respondent in the present case when the tribunal was put out of existence forcefully by an executive direction.

33. In this connexion, he relied upon the decision of Rai Sahib Ramdayal Ghasiram Oil Mills and Partnership Firm v. Labour Appellate Tribunal 1963-II L.L.J. 65. In that case the disputes were referred to a tribunal consisting of Sri Kurian on 13 May 1955. Thereafter, pending the adjudication, Sri Kurian retired from service. Thereupon, Government of Hyderabad made the following notification on 2 June 1955:

In exercise of the powers conferred by Sub-section (1) of Section 7 of the Industrial Disputes Act, 1947 (14 of 1947), and in super-session of the Labour Department Notification No. B. 189/54/134, dated 15 October 1954, the

Rajpramukh hereby constitutes an industrial tribunal consisting of Sri Bhikaji Patil as its sole member for the adjudication of industrial disputes in accordance with the provisions of the said Act with immediate effect.

34. In these circumstances, the Government did not take action under Sub-section (2) of Section 7 after Sri Kurian's services ceased to be available but instead of doing that the Government took action under Section 7, Sub-section (1) of the Act. in supersession of its previous notification and constituted a fresh industrial tribunal consisting of Sri Patil as its sole member.

35. Their lordships of the Supreme Court held that the order of supersession and reconstitution of the tribunal was illegal inasmuch as no fresh reference to the new tribunal was made under Section 10(1).

36. The Supreme Court, however, observed as follows:

We need not consider here whether the old tribunal still continued to exist and there was merely a vacancy therein and therefore, there was no occasion to constitute a fresh tribunal under Sub-section (1) of Section 7 because, having constituted a fresh tribunal the Government failed to refer the dispute in question to it under Sub-section (1) of Section 10 of the Act.

37. Hence, Rai Sahib Ramdayal Ghasiram Oil Mills case 1983-II L.L.J. 65 (vide supra) does not help the respondent.

38. It will be noticed that the Supreme Court did not decide in this case whether Section 7 could be Invoked in such circumstances, but considered the position upon the footing that if such an order under Section 7 could be made, it was not sufficient to make an order under Section 7 but it was also necessary to make an order under Section 10.

39. Hence, the contention advanced by Sri Datta must be rejected.

40. In my opinion, the order appointing a fresh tribunal under Section 7(1) and referring the same dispute to a different tribunal under Section 10 no doubt can be made when the tribunal already constituted by reason of something inherent in it

such as the death or resignation of the members of the tribunal or by some subsequent events such as lapse of time ceases to exist. This is, however, a different thing from a case where there is no retirement, no case of vacancy and no case of application of Section 8, but a case where a tribunal was abolished when a reference was pending before it though it is not permissible under the Act. Hence, the notification or order abolishing the first tribunal and the consequent reference of the same dispute under Section 10(1) to the tribunal were clearly without jurisdiction.

41. Hence, in the result, in my opinion, the rule must be made absolute.

42. There will be no order as to costs.

R.N. Dutt, J.

43. I agree.