

SUPREME COURT OF INDIA

Calcutta Electric Supply Corporation Ltd.

Vs.

Calcutta Electric Supply Workers' Union

C.A.No.18 of 1958

(B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo JJ.)

22.04.1959

JUDGEMENT

P. B. GAJENDRAGADKAR J.:

1. This is an appeal by the Calcutta Electric Supply Corporation Ltd., (hereinafter called the appellant) by special leave against the award directing the appellant to provide medical treatment to the families of its employees subject to the limitation that no employee would be entitled to claim medical treatment which would cost more than one month's salary due to him. This award was passed in an industrial dispute between the appellant and its workmen and others (hereinafter called the respondents). The dispute related to 14 items and it was referred to the Industrial Tribunal by the Government of West Bengal on 24-5-1954. After the notification referring this dispute to the industrial tribunal was issued the said Government issued another notification on 7-8-1954, by which certain other items were added thus raising the total number of items in dispute to 22. One of these items was medical aid. It is under this item that the impugned part of the award has been passed. This part of the award was challenged by the appellant by preferring an appeal before the Labour Appellate Tribunal; but the plea raised by the appellant before the Labour Appellate Tribunal failed and the award was confirmed. That is how the appellant has come to this, Court by special leave against the direction in question.

2. Two points have been raised before us by Mr. B. Sen on behalf of the appellant. He contends that the tribunals below exceeded their jurisdiction in issuing the impugned direction against the appellant because the said direction covers a matter which was not included in the reference; and he also argues that if the said matter is held to have been included in the reference the reference is bad since the said matter cannot be said to give rise to an industrial dispute within the meaning of S. 2(k) of the Industrial Disputes Act, 1947 (14 of 1947).

3. There is no doubt that these objections have not, been considered either by the award of the tribunal or by the decision of the Labour Appellate Tribunal; but when the appellant applied for special leave to this Court it had filed an affidavit made by its lawyer Mr. Mullick in which it was specifically averred that these contentions had been urged before the Labour Appellate Tribunal and that even before the tribunal the latter point had been specifically taken. Mr. Kumar, for the respondents, has strenuously argued that the appellant should not be permitted to raise these contentions for the first time before this Court. He has relied upon the fact that in the statement of the appellant before the tribunal these points are not indicated nor are they mentioned in the memorandum of appeal filed by the appellant before the Labour Appellate Tribunal. He suggested

that if there points had been taken before the tribunals below the award and the decision would have referred to them. Prima facie there is considerable force in this argument; but on the other hand Mr. Kumar does not dispute the correctness of the statement made by Mr. Mullick in his affidavit filed in this Court; and so we must assume that the points were taken before the tribunals below as stated in the affidavit. That is why we cannot uphold Mr. Kumar's objection at the appellant should not be allowed to raise those points before us.

4. It is necessary first to deal with the scope of the reference. What transpired before the conciliation officer prior to the making of the reference does not appear on the record; and there can be no doubt that in construing the terms of reference and in determining the scope and nature of the points referred to the industrial tribunal, we must look at the order of reference itself. All the other items except item 20 refer to industrial disputes between the appellant and its workmen. It is only item 20, medical aid, which it is urged refers not only to the employees but also to the members of their family. Mr. Kumar contended before us that there are several instances where industrial tribunals have directed the employers to provide medical aid to the members of their employees' families subject to terms, and conditions specified by the said awards; and he argued that it is not unreasonable to suggest that the expression "medical aid" in the context would include a demand for medical aid to the members of the employees' families. We are unable to accept this argument in the circumstances of the present case and having regard to the context of the dispute which led to the reference. The reference clearly shows that there were several items of dispute between the appellant and its employees; and the claim for medical aid which was included in the reference by the subsequent notification also appears to be by reference to the employees themselves. It is significant that one of the unions representing the appellant's employees does not refer to this part of the claim even in its statement filed before the tribunal. It has made five demands under the item of medical aid all of which refer to the employees and none of which contemplates the members of the families of the employees. This would be evident from the statement filed by the Calcutta Electric Supply Corporation Mazdoor Union. The statement filed by the Calcutta Electric Supply Workers' Union makes a two-fold demand under this item viz., that the present system of medical aid to work men should be broad-based and should be extended to their families; whereas the written statement filed on behalf of the Calcutta Electric Supply Corporation Ltd., Employees' Association refers to free medical treatment for wife and children of middle-class employees. It would thus be noticed that there is no uniformity in the demands made by these two statements. It appears that the claim made by the respondents in regard to medical aid was really intended to make the relief afforded by the appellant to its employees more broad-base and that is illustrated by the five demands made in the statement filed by the Calcutta Electric Supply Corporation Ltd., Mazdoor Union. Having regard to the relevant facts available on the record of this case we do not think that it would be reasonable to hold that the item of medical aid which has been included in the reference is intended to cover anything beyond medical aid for the employees of the appellant. That being our view we must hold that on this reference it was not competent to the tribunals below to consider whether the employees were entitled to claim medical aid for the members of their families. This conclusion alone is enough to dispose of this appeal.

5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families; he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no

employee can claim relief more than his one month's salary. He has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We propose to express no opinion on this aspect of the matter. We do not also propose to express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under S. 2 (k) of the Industrial Disputes Act. If the respondents think that their claim for medical relief for the members of their families is legitimate and can properly become the subject-matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contentions which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been recognised by awards; but we are not called upon to consider that aspect of the matter in the present appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject-matter of reference with which an industrial tribunal can deal.

6. The appeal accordingly succeeds and the award passed by the tribunals below is set aside. Since the appellant is succeeding on a point which was not expressly dealt with by the tribunals below we direct that the parties should bear their own costs.

Appeal allowed.

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