Western India Match Company, Limited

v.

Industrial Tribunal, Madras, and Another

(Supreme Court Of india)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR HON'BLE JUSTICE A.K.SARKAR HON'BLE JUSTICE K.N.WANCHOO

Civil Appeal No. 477 Of 1960 | 30-01-1960

Gajendragadkar, J.

1. An industrial dispute between the appellant, the management of Western Indian Match Co., Ltd., and the respondents, its employees, was referred for adjudication by the Government of Madras to the industrial tribunal, Madras, on 14 May 1957. The dispute thus referred was in regard to the calculation of the loss sustained by the workers who were formerly drawing stores quota of more than Rs. 13. On this reference, the tribunal made its award on 24 July 1957. Against the award, the appellant moved this Court by its application for special leave under Art. 136 of the constitution but the said application was Constitution but the said application was dismissed on 30 September 1957. Thereafter, the appellant moved the High Court at Madras by a writ petition under Art. 226 of the constitution. It was urged by the appellant before the High Court that by the refusal of the tribunal to examine the conciliation officer as suggested by the appellant, the appellant had no fair or effective opportunity to prove its case and so, the trial before the tribunal was unfair.

2. On the other hand, the respondents contended that the dismissal of the appellant's application for special leave constituted a legal bar against the maintainability of the writ petition filed by the appellant before the High Court. If was also pleaded that on the merits, the appellant had not made out any case for the issue of a writ of certiorari.

3. The High Court held that the dismissal of the appellant's application for special leave did not preclude the High Court from entertaining the writ petition under Art. 226 : that on the merits, the appellant had made out a case for the issue of a writ but that in view of the dismissal by this Court of the appellant's petition for special leave, it would not be appropriate to issue the writ of certiorari on the writ petition filed by the appellant. It is against this order that the appellant has come to this Court with a certificate granted by the High Court, and three questions fall to be considered in this

appeal. The first is whether the High Court was right in holding that the dismissal of the special leave petition filed by the appellant was not a bar to the competence of the appellant's writ petition before the High Court under Art. 226; the second is whether the High Court was right in holding that on the merits, the appellant had established a case for the issue of the writ claimed by it; and the third is, if the second question is answered in the affirmative, whether the High Court was justified in in refusing to issue the writ on the ground that the appellant's application for special leave had been rejected by this Court.Having heard the parties, we have come to the conclusion that the second issue must be answered against the appellant and so it becomes unnecessary to consider the first and the third questions. For the purpose of the present appeal, we will assume that the dismissal of the appellant's petition for special leave did not preclude the High Court from entertaining a subsequent petition for writ filed by the appellant under Art. 226.

4. Before dealing with the second question already formulated, it is necessary to set out the material facts leading to the present dispute. The appellant runs a match factory at Madras among other places in India. Its labour strength is about 1, 682. Prior to 1953, the appellant was paying to each of its workmen a sum of Rs. 1-9-0 as grain allowance and was, besides, supplying stores at pre-war prices in addition to his basic wages. The stores quota of the workers was fixed with the result that out of 1, 682 workers, 1, 460 had stores quota of Rs. 13 per month and the remaining 222 had stores quota ranging between Rs. 14 and Rs.26. In 1953, however, a dispute arose between the appellant and the respondents and it was referred for adjudication. One of the issues under reference was the fixation of dearness allowance in lieu of the existing stores benefit system. By the award made in the said reference, the stores benefit system was abolished and the appellant was directed to pay the entire dearness allowance in cash. The tribunal fixed the dearness allowance of four annas one pie per point above one hundred points of the Madras cost of living. This allowance was in lieu of the stores quota, grain allowance and the dearness allowance of two annas per rupee of basic wages which was then being paid. Aggrieved by this award, the respondents preferred an appeal before the Labour Appellant Tribunal. It was urged on their behalf that the tribunal had no jurisdiction to abolish the stores quota system and it was argued that the cash value determined by the award in lieu of stores quota was very law. The Labour Appellate Tribunal rejected the respondents' plea and confirmed the award.Pending these proceedings, the appellant had made an offer in its counter-statement and consistently with the said offer, it drew up a memorandum of 6 May 1954, working out the effect of the award. The relevant calculations made by the appellant showed that 29 time-rated workers had lost amounts ranging from seven annas to Rs. 24-11-0 and compensation to such workers was accordingly determined on 6 May 1954 which was the date when the memorandum was drawn. Accordingly, the appellant offered to make good the loss suffered by the said workmen retrospectively from 1 November 1953 to 31 March 1954 and it added that from 1

April 1954, the basic wages had been increased proportionately to compensate for the said loss.

5. Subsequently, the respondents raised a dispute with regard to the special allowance for those with increased stores quota, and the conciliation proceedings were taken on that dispute. According to the appellant, during the course of these proceedings, the parties agreed and settled that the rate of compensation to the workers mentioned in the memorandum of 6 May 1954, should be increased on the basis specified in the statement. The conciliation officer then made a report to the Government about the said settlement. He stated in his report as follows :

"I made certain recommendations regarding compensation to those who had increased stores quota formerly. The parties agreed before me that this item should be treated as settled on the following terms, viz., those who lost from seven annas to Rs. 5 should be compensated to the extent of Rs. 3; those who lost from Rs. 5 to Rs. 10 to the extent Rs. 7-8-0 and those who lost over Rs. 10 should be compensated to the extent of Rs. 12-8-0."

6. The appellant's case is that it implemented this agreement and issued necessary orders on 28 December 1954.After an interval of nearly six months, the respondents raised another dispute which again was the subject-matter of conciliation proceedings. At the end of these proceedings, a report was submitted by the conciliation officer suggesting that the arrangement agreed upon had been implemented; but the respondents were not satisfied and they wanted the dispute to be referred to the industrial adjudication. The appellant was not agreeable to join the respondents in their request for a reference. So, the respondents moved the State Government and in consequence, the present reference was made.

7. Before the tribunal, it was urged by the appellant that on 20 December 1954, an agreement had been reached not only in regard to the rate at which compensation should be paid but also in regard to the method of arriving at the loss incurred by the respondents. It was conceded by the appellant that this part of the agreement which was preliminary to the settlement about payment of compensation had not been mentioned by the conciliation officer in his report and was not reduced to writing. In fact, the said agreement did not conform to the requirements of S.12 (3) of the Industrial Disputes Act. The Appellant, however, urged that if the conciliation officer was examined, he would depose to the said agreement. The respondent denied the existence of the agreement in question and objected to the conciliation officer being examined by the appellant. The tribunal held that the agreement which had been

reached between the parties had been recorded by the conciliation officer in some of his letters and so, it would only be a matter of construction. On that view, it refused to examine the conciliation officer. Parties then led evidence before the tribunal about the point in dispute and ultimately, the tribunal made its award. With the merits of the award or its details, we are not concerned in the present appeal.The appellant urged before the High Court, and with success, that the refusal of the tribunal to examine the conciliation officer amounted to a denial of a fair trial and so, a writ of certiorari should be issued. In regard to this contention, it is necessary to bear in mind that the oral agreement which the appellant pleaded and which was denied by the respondents was at best a relevant fact which the appellant sought to prove. It is clear - and, indeed, it is conceded - that even if the agreement pleaded had been proved, it would not and could have prevented the tribunal from considering the merits of the dispute for itself apart from the said agreement. The method in which the loss sustained by the workmen by the abolition of the stores quota system should be ascertained was a matter for the tribunal to determine on the evidence adduced before it. The agreement on which the appellant relied did not amount to a settlement under the Act and even if it had been proved, it was clear that the respondents had gone back upon it and so, the value of the agreement in the eyes of the tribunal, would have been very little. Therefore, the part which the proof of the agreement would have played in the determination of the present issue was very minor and that is a circumstance which cannot be ignored.

8. Besides, on the probabilities, it is very unlikely that an agreement would have been proved as alleged by the appellant. What was agreed to between the parties has been mentioned by the conciliation officer in his report to the State Government and the respondents contended, and with some force, that if there had been an agreement as to the method by which the loss sustained by the workmen should be determined, the consiliation officer would have referred to it along with the agreement as to the payment of compensation. The failure of the conciliation officer to refer to this agreement and the admitted fact that the said agreement was not reduced to writing supported prima facie the respondents' contention that no agreement had been entered into. This fact also must have weighed with the tribunal and so, this aspect of the matter also has to be borne in mind in dealing with the present controversy.Besides, it is conceded that the tribunal is not bound by the strict rules of procedure of the Evidence Act and if having regard to the fact that the agreement alleged was denied by the respondents, it came to the conclusion that the proof of the agreement would not really matter, that clearly would be a decision within its jurisdiction and it would be unreasonable to invoke prerogative jurisdiction of the High Court under Art. 226 to overrule or reverse the said conclusion of the tribunal. The assessment or the loss incurred by workmen was the very dispute referred to the tribunal and since the respondents were seriously disputing the fact of the alleged agreement, the tribunal may well have thought that it would be futile to prolong the hearing of the dispute by

examining the conciliation officer who would certainly have been bitterly cross-examined by the respondents if he had supported the appellants' case that there was an agreement as to the method for determining the loss incurred by the workmen.

9. In this connexion, it would be necessary to emphasize that the refusal to admit evidence cannot in every case and necessarily be deemed to make the trial unfair, the tribunal in its jurisdiction and in its discretion may consider that some evidence offered by one of the parties is irrelevant or immaterial and the fact that the party aggrieved by the refusal of the tribunal to admit evidence on such grounds contends that in its opinion, the evidence sought to be proved by it was material, would not always be a ground for issuing a writ of certiorari, when otherwise the order passed by the tribunal is within its jurisdiction and can be held to have been passed after a due exercise of judicial discretion. The main point which has not been properly appreciated by the High Court is that the proof of the agreement would not have helped the appellant materially because in view of the fact that the agreement was denied by the respondents, the tribunal would have had to consider the merits of the dispute for itself. At the highest, it may be said that there would have been before the tribunal the fact of agreement if it had been proved and along with the other facts, the tribunal may have had to weigh this fact as well. If that is the true position, it is difficult to appreciate how the appellant would be entitled to invoke the jurisdiction of the High Court under Art. 226, to correct the alleged error committed by the tribunal. We are, therefore, disposed to take the view that the High Court was in error in coming to the conclusion that the appellant has had no fair trial in the proceedings referred to the industrial tribunal for adjudication of the dispute between it and the respondents. In that view of the matter, it is unnecessary to consider the two other points specified above.

10. The result is, the appeal fails and is dismissed with costs.