

State of Maharashtra

Vs

Kamani Employees' Union and Others

Civil Appeal No. 1098 of 1969

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

27.04.1973

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, on certificate, by the State of Maharashtra is directed against the judgment and order of the Bombay High Court dated March 15, 1967, in Special Civil Application No. 1067 of 1964, quashing the order of the State Government date January 18, 1964, making a reference to the Industrial Tribunal.

2. At the outset, it must be stated that the workmen who filed the writ petition in the High Court and got an order in their favour, have not appeared before us to support the order of the High Court. On behalf of the management, which was a party before the tribunal and before the High Court it has been represented that it is no longer interested in these proceedings.

3. It is necessary to state a few facts leading up to the filing of the writ petition in the High Court. On December 19, 1962, the State Government referred certain disputes for adjudication to the industrial Tribunal. The matters in dispute included various items; but it is only necessary to refer to dispute No. 3 which related to the production bonus. That dispute relating to production bonus in Part I for daily rated workmen was as follows :

3. Production Bonus. - The present incentive scheme should be revised as under :-

(a) The scheme would be made applicable to all the departments of the company.

(b) When the production in the establishment reaches 500 tons in a month all the daily rated workers should get 10 per cent of their total earnings as production bonus. The number of workmen being the average number employed in the year 1960.

(c) For every 10 tons increase in a month's production above 800 tons a 2% increase in the percentage should be given over and above that in clause (b) above.

(d) The existing bye-laws and clauses regarding the absenteeism etc. should be abolished.

(e) Bonus should be determined by the ratio of days filled in by a worker to the number of working days in a month.

(f) The above benefits should be paid with retrospective effect from 1st July 1961.

4. In Part II for monthly rated employees, the dispute regarding production bonus was as follows :

3. Production Bonus :

(i) Monthly rated employees connected directly with production should be paid production bonus at the same rate paid to daily rated workmen.

(ii) 60% of the average production bonus paid to the employees directly connected with production, should be paid as production bonus to all other monthly rated employees. Production bonus for all monthly rated employees should be paid with retrospective effect from 1st July 1961.

5. When the adjudication on that reference was pending, the State Government on January 18, 1964, made another reference to the same tribunal as follows :

Should the existing incentive scheme of production bonus be replaced by the new incentive scheme evolved by Messrs. Ibcon Private Limited in their report dated October 1963 as desired by the management ?

6. In this order of reference, it was stated that a previous reference had already been made on December 19, 1962 regarding the revision of the production bonus scheme for the workmen of the company. It is further stated that the company made a representation to the State Government that the terms of reference already made should be supplemented so as to the said order that it is of the opinion that the matter on which a further reference is asked for by the employer is "concerned with or relevant to the said dispute". The reference to the "said dispute" is regarding the revision of production bonus which was already the subject of the reference dated December 19, 1962.

7. The Tribunal appears to have passed an award on February 27, 1964, on all the disputes comprised in the first reference excepting demand No. 3, which, as we have already stated, relates to the revision of existing production bonus scheme. The union filed an application before the tribunal, stating that the second reference dated January 18, 1964, should not be adjudicated upon. This objection was raised on the ground that the order dated January 18, 1964, really amounts to the withdrawal of the previous reference made on December 19, 1962 and that it interferes with the exercise of the powers of the tribunal in the matter of adjudicating dispute No. 3 already referred to it. The management opposed this application on the ground that the order dated January 18, 1964, does not have the effect of withdrawing the previous reference and that on the other hand, the dispute that was referred by order of 1964 was really one "connected with or relevant to the dispute" which was already pending adjudication before the tribunal.

8. The tribunal overruled the preliminary objection of the workmen about the competency of the reference made on January 18, 1964; and it resulted in the latter approaching the High Court under Article 226. The High Court, in its present order, accepting the contentions of the union, has held that the second order dated January 18, 1964, had really the effect of superseding the previous reference made on December 19, 1962 and also of interfering with the powers exercised by the tribunal in respect of the previous reference.

9. Mr. Bhandare, learned Counsel for the appellant-State, has contended that the reasoning of the High Court that the second order of reference amounts to a withdrawal of the previous order dated December 19, 1962, is fallacious. He has further pointed out that the subject-matter of the reference dated January 18, 1964, could have been included in the order of December 19, 1962 and then it would have been perfectly competent for the tribunal to consider the nature of the modification that

it to be effected in respect of the production scheme then existing in the company. For that purpose, the tribunal could have considered the nature of the modifications required by the workmen as well as the further question whether the incentive scheme evolved by the Ibcon Private Limited could be adopted. Mr. Bhandare also pointed out that the question covered by the second reference is really a matter which is "connected with or relevant to the dispute" already pending before the tribunal.

10. We are of the opinion that the contentions of Mr. Bhandare have to be accepted. We are not able to appreciate the reasoning of the learned Judges that the order dated January 18, 1964, has the effect of withdrawing or superseding the reference already made on December 19, 1962. There will be withdrawal of a reference comprises matters or disputes totally unconnected with or different from the disputes originally referred. Neither is the case here. On the other hand, in our opinion the question regarding the nature of the modification to be effected to the production bonus scheme has to be considered by the tribunal having due regard to the scheme as it exists as well as to the various suggestions that may be made by the parties, namely, the employer and the employee. If the employer had relied on the scheme evolved by M/s. Ibcon Pvt. Ltd., it was certainly competent for the tribunal to consider how far that scheme could be adopted in this particular case. This aspect could have been considered by the tribunal, because it is "connected with or relevant to the dispute No. 3", relating to bonus.

11. We are not inclined to accept the view of the High Court that the reference dated January 18, 1964, in any manner interferes with the powers of the tribunal in adjudicating upon the demand No. 3 covered by the reference dated December 19, 1962. In fact, in our view, the question that has been further referred by order dated January 18, 1964, is really a matter demand No. 2 already pending adjudication before the tribunal. The tribunal had full jurisdiction when dealing with demand No. 3 covered by the order dated December 19, 1962, to consider the report mentioned in the subsequent reference dated January 18, 1964. It had full power to consider as to in what manner and to what extent the modification is to be effected in the incentive scheme obtaining in the company. In fact, even without the second reference the tribunal, when dealing with demand No. 3 of the first reference, would have also considered the question of adopting the scheme evolved by Ibcon Private Limited, because it was a relevant matter; and also connected with the production bonus scheme. When it was so open to the tribunal to consider the scheme of Ibcon, the fact that the Government specifically referred for consideration the said scheme, makes no difference. At any rate the question covered by the second reference was a matter "connected with or relevant" to dispute No. 3 of the first reference and hence the State was well within its jurisdiction under Section 10(1)(d) of the Industrial Disputes Act in passing the order dated January 18, 1964. The High Court has referred to various decisions regarding the powers of the Government, when making a reference, which, in our opinion, it is not necessary to consider, in the view that we take regarding the nature of the reference dated January 18, 1964.

12. In the result, the judgment and order of the High Court are set aside. The tribunal will proceed to adjudicate on the question pending before it regarding the revision of the existing production bonus scheme. As the original reference itself is of the year 1962, the tribunal will give a very expeditious disposal to this matter. The appeal is accordingly allowed. There will be no order as to costs.

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