CALCUTTA HIGH COURT

Anil Kumar Upadhaya

Vs.

P.K. Sarkar

Matter No. 48 of 1960

(D.N. Sinha, J.)

04.07.1960

ORDER

D.N. Sinha, J.

1. The facts in this case are shortly as follows : The respondent No. 2, Messrs. Blackwood Hodge (India) Private Limited is a company incorporated under the Indian Companies Act. The petitioner and the respondents Nos. 5 and 6 are the Trustees appointed under an Indenture of Trust relating to the staff provident fund of the company. By an order dated 3rd August, 1959 made under Section 10 of the Industrial Disputes Act, 1947 the Government referred an industrial dispute existing between the company and their workmen represented by Blackwood Hodge Employees' Welfare Union, being the respondent No. 2 herein, to the adjudication of the Second Industrial Tribunal, Calcutta. The dispute, as set out in the schedule of the order (annexure-"A" to the petition) relates to the amendment of the Provident fund Rules. The Provident Fund Rules are contained in an Indenture dated 23rd May, 1953 being the Trust Deed, containing also rules and regulations relating to the provident fund. Under clause 4 of the said Indenture, the Trustees may, with the consent in writing of the employer and shall, if so desired by the employer, alter, vary, modify, remake, rescind, add to, or cancel any of the provisions of the Indenture or the rules, provided however that so long as the Provident Fund shall be a recognized Provident Fund under the provisions of the Indian Income Tax Act, 1922 or any modification thereof, the power contained in the said clause shall not be exercised without the previous consent of the Commissioner of Income-tax having jurisdiction over the Fund. The company filed its written statement on or about the 11th July, 1959 taking the point that the order of reference was bad in law as the Trustees were not made parties and as such the Tribunal had no jurisdiction to adjudicate upon the alleged order of reference. Subsequently, an additional written statement was filed by the company disclosing the names of the Trustees and stating that there was no relationship of employer and employee between the Trustees and the workmen and also reiterating the objection that the Trustees were not parties to the alleged Order of reference. On the 22nd September, 1959 an application was filed on behalf of the Union stating that the Board of Trustees should be made necessary and proper parties inasmuch as the members of the Board were interested in the result of the adjudication and that unless they were added as parties to the dispute he effectual administration of the Provident Fund Institution will not be possible

and practicable and the results of the adjudication will be inoperative and infructuous. It was, therefore, prayed that the members of the Board of Trustees should lie "summoned to appear in the proceedings as parties to the dispute under Section 18 (2) of the Industrial Disputes Act, 1947". On the very same day, the company appeared and stated that it had objection to this prayer and a written objection would be filed. The company thereafter filed its objection and the Tribunal made an order on the 24th December 1959. A copy of the said order is annexure "B" to the petition. The Tribunal in its judgment states that two questions arise in the application, the first being as to whether the Tribunal had power under the Industrial Disputes Act, 1947 to add new parties to the proceedings and the second point is whether the Trustees should be added as parties to the proceeding. The Tribunal considered Sub-Section (3) of Section 18 of the Industrial Disputes Act and came to the conclusion, following two Madras Cases which I shall presently notice, that apart from the parties to the industrial dispute as mentioned in the order of reference, the Tribunal could summon other parties to appear in the proceedings as parties to the dispute and that this, by necessary implication, confers power upon the Tribunal to add new parties to the dispute. It was further held that new parties so added need not include only employers and employees. A party can be added if it is a necessary or proper party, i.e., a party affected by or interested in the dispute or whose presence is necessary for complete and final decision of the questions involved in the proceedings. The order was that the Trustees should be added as parties to the dispute under Section 18 (3)(b) of the Industrial Disputes Act, and summons was issued to them to appear in the proceedings on 11-1-60. The summons that was issued upon the members of the Board of Trustees is in form D-1. The summons in form D-1 is the appropriate summons to require any person to produce before the Tribunal any books, papers or other documents and things in the possession of the party summoned, and/or to answer all material questions relating to the dispute. This form, which appears in the schedule to the Rules framed under the Act, refers to Rule 17 which is in the following term:

> "17. Summons - A summons issued by a Board, Court, Labor Court or Tribunal shall be in Form D-1 and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation, or adjudication by the Board, Court, Labor Court or Tribunal which the Board, Court, Labor Court or Tribunal thinks necessary for the purposes of such investigation or adjudication".

2. On the 11th January, 1960 the Board of Trustees appeared with their representative before the Tribunal and was granted time for filing written statement. On the 29th January, 1960 a representative on behalf of the Trustees asked for one month's time to move the High Court against the order dated 24-12-59. Time was granted and thereafter this Rule was issued on the 3rd March I960 calling upon the respondents to show cause why the said order should not be quashed and/or set aside etc. There has been a stay of further proceedings pending the disposal of this Rule. Mr. Meyer appearing On behalf of the petitioner has taken three points. The first point taken is that the Tribunal had no jurisdiction to add parries to an order of reference or the proceedings. Reference is made to Section 11 of the Industrial Disputes Act the relevant part whereof is as follows :

> "11(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labor Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator

or other authority concerned may think fit.
XX XX XX

Every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :

(a) enforcing the attendance of any person and examining him on oath;
(b) compelling the production of documents and /material objects;
(c) issuing commissions for the examination of witnesses;
(d) in respect of such other matters as may be prescribed;
Xx xx xx

3. What is argued is that the power to add parties, which is conferred by the Code of Civil Procedure (Order 1 Rule 10) is not one of the powers conferred upon a Tribunal. The power of enforcing attendance of any person for his examination on oath or compelling the production of documents and material objects is a power which has been granted. The power to add parties has not been granted, nor has it been prescribed under clause (d) of Sub-Section (3). Neither is there anything in the rules prescribed which grants any such, power. This brings me to the second point that has been raised, namely that without proper rules being prescribed for the purpose, there is no jurisdiction to add parties. The third point that has been taken is that the dispute that has been referred is an industrial dispute which can only exist between the employer and the employee that is to say, the employer and its workmen. It is argued that the workmen of the company are not employees or workmen of the Trustees, who are not the employers in any sense of the word. I shall now deal with, the first two points.

4. As stated above, the first point taken is that the Tribunal had no jurisdiction to add parties to an order of reference or the proceedings. An order of reference is made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the "Act"). It has now been held that the jurisdiction to make such an order is entirely in Government. It is the Government which has subjectively to come to a conclusion whether in its opinion any industrial dispute exists or is apprehended. In such matters, the court does not intervene. Under Sub-Section (5) of Section 10, power has been given to Government to add parries after the making of the order of reference, but this is restricted to a case where it is thought that the dispute is such that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, the dispute referred. We are not concerned with any such case in the present application. Next we come to Section 11 of the Act. By Sub-Section (3) of Section 11 certain provisions of the Code of Civil Procedure 1908 have been made applicable to proceedings before a Tribunal. It must be noted that the provisions of the entire Code of Civil Procedure have not been made applicable. There are three headings (a), (b) and (c) which have been made applicable and it is laid down in clause (d) that the Code will apply in such other matters as may be prescribed, that is to say, prescribed by rules. Under Section 38, Government has been given power to make rules for the purpose of giving effect to the provisions of the Act. In particular, such rules may make provision for the powers and procedure of a tribunal including rules as to summoning of witnesses and production of documents relevant to the subject matter of an

enquiry or investigation. Rules have been framed under the Act, called the 'West Bengal Industrial Disputes Rules 1958'. I have already set out above, Rule 17. There is no other Rule with regard to the issue of summons and no Rule at all about the addition of parties. I have also pointed out above that Form D-1 which form summons has been served in this case upon the petitioner, is a form for production of documents and/or for giving evidence and is not the appropriate form calling upon the petitioner to appear as a party to the reference. In fact, no such form has been either prescribed or has ever been in use. We thus see that apart from Section 18 of the said Act, to which, I shall presently refers there is at present no provision for the addition of parties by the Tribunal. Such a power could easily be provided by making rules, but no such rule has been prescribed and, therefore, it must follow that the Legislature or its delegate did not think it to confer any such power expressly. I now come to Section 18 of the Act. Although there is no express provision in any part of the Act or the Rules for summoning parties to appear in the proceedings as parties to the dispute, though they are not parties, to the Order of reference, we find here a mention of such a procedure. This is a provision which deals with a specific aspect of an industrial dispute, namely as to the parties upon whom a settlement in the course of conciliation proceeding or an award is binding. It has been held by two decisions of the Madras High Court, that a power to add parties has been conferred upon the tribunal by implication, under this provision of law. The first case is a Division Bench judgment of the Madras High Court, *P.G. Brookes v. Industrial Tribunal Madras*[1], The facts in that case are as follows : The Madras Electric Tramways (1904) Ltd., served the city of Madras with a tramway system. The properties and assets of the company were mortgaged and charged to the Beaver Trust Ltd., being the trustees for the debenture holders of the company to secure the repayment of all the debentures. By an order dated 30-12-1952 the Government referred certain disputes between the company and its workmen to the Industrial Tribunal, Madras. At the time of reference, Mr. P.G. Brookes was the Managing Director of the company. During the pendency of the proceedings he tendered resignation as Managing Director and was appointed a receiver of the properties of the company from 1-4-1953. Thereupon, the Union of Workman filed an application to implead the receiver as a party respondent to the adjudication proceedings. This was done upon notice to the receiver who objected to it. It was stated on his behalf that he was neither a necessary nor a proper party to the proceedings, and that the Tribunal had no power or jurisdiction to add him as a party. The Tribunal negatived his contention and made him a party, against which an application was made to the Madras High Court for quashing the order. It was held by the learned Judges that the receiver represented the company, and was a proper party to the adjudication proceedings. It was conceded that there was no section in the Act expressly empowering the Tribunal to add parties to the proceedings. It was, however, held that such power is necessarily implied in Section 18 of the Act and that clause (b) of Section 18 will not have any meaning unless the Tribunal has power to add parties. This is what the learned judges said

> "As contended by the learned counsel for the petitioner there is no section in the Act expressly empowering the tribunal to add parties to the proceedings. Section 11(3) restricted the application or the provisions of the Civil Procedure Code to the four matters mentioned in sub-clauses (a), (b), (c) and (d) of that section. The

[1] AIR 1954 Mad 369

> Tribunal is authorized to enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, issue commissions for the examination of witnesses and in respect of such other matters as may be prescribed. It is

> not suggested that any other matters have been prescribed. It is therefore contended that Order 1, rule 10, Civil Procedure Code does not apply and therefore the tribunal cannot add new parties. But in our view such power is necessarily implied in Section 18 of the Act. Clause (b) of Section 18 will not have any meaning unless the tribunal has power to add parties. Under that clause an award is binding on all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be records the opinion that they were so summoned without proper cause. Clause (a) deals with all parties to the industrial dispute. Clause (b) refers to all other parties summoned to appear as parties in the dispute. This necessarily implies that parties other than the original parties to an industrial dispute can be summoned as parties to the proceedings. Such parties can be summoned at the instance of a party or 'suo motu' by the tribunal by issuing notice to them".

5. The next question that the learned Judges had to decide is the kind of parties who can be summoned by the tribunal under this clause. It was contended that the only party that could be added was either the employer or the employee. For example, if there were several Unions of workmen and one Union had been left out then the tribunal could add that Union as party to the reference. This submission was negatived. It was held that all parties who were necessary or proper might be added, that they need not be either employer or employee. The next case is also a decision of the Madras High Court, being a decision of a single Judge. *Radha Krishna Mills Ltd. v. Special Industrial Tribunal, Madras*[2] The Government of Madras referred to a Special Industrial Tribunal for adjudication, a dispute between workmen of 65 Textile Mills and the management of the said Mills with regard to compensation for involuntary unemployment caused to the workmen. The Mills took the point that they could not give employment because they depended on Government for work and sufficient work was not provided. During the pendency of the proceedings, one of the mills applied to the Industrial Tribunal to summon and implead the Government of Madras as a party. The point that arose was as to whether the Tribunal had jurisdiction to implead a party and secondly, if it had jurisdiction, whether Government was a necessary or a proper party. On the first question, the finding was that the Tribunal had the power to summon and add as party any person whose presence the Tribunal deems necessary for a proper adjudication of the dispute. On the second question, the Tribunal found that the Government of Madras was neither a necessary nor a proper party. This view was upheld by the High Court and the learned Judge followed the Division Bench judgment cited above.

6. Coming back to Section 18(3)(b) of the Act, with respect I agree that the Tribunal must by implication be taken to have been clothed with the power to summon other parties, meaning thereby, parties other than parties to the industrial dispute, to appear in the proceedings as parties thereto. It will be noted that clause (a) speaks about "all parties to the industrial dispute" and clause (b) speaks about all other parties summoned to appear in the proceedings as parties to the dispute". Clause (a) must necessarily refer to the order of reference. Firstly, they must be parties to a dispute which must be an industrial dispute.

[2] AIR 1954 Mad 686

The parties between whom there can be an industrial dispute appears from the definition of the expression "industrial dispute" as defined in clause (k) of Section 2 of the said Act. Such a

dispute can exist only between employer and employer or employer and workmen or between workmen and workmen. It follows, therefore, that an industrial dispute can exist between employer and his workmen. It is only such an industrial dispute that can be referred under Section 10 where the employer is concerned. Therefore, clause (a) refers to the parties between whom an industrial dispute has been referred under Section 10. Clause (b) gives by implication power to the Tribunal to summon "other parties to appear in the proceedings as parties to the 'dispute'. It has reference to the 'dispute', meaning thereby the particular industrial dispute or disputes referred under Section 10. Where of course, an employer or an employee has been left out, the case will be covered by clause (a) without difficulty. So far as clause (b) is concerned, it is clear that it refers to parties whose presence would be either proper or necessary. It may so happen that the Tribunal might find that a particular party is a proper or necessary party, whose absence from the adjudication would render the award nugatory. In such a case, it would have the power to summon such a party to appear in the proceedings as a party to the dispute. In the Madras cases it has further been held that this, by implication, confers power to add new parties. With great respect I do not see why it is necessary to go so far. In Section 18 we have two clauses in juxtaposition to each other, one speaking of parties to the industrial dispute and the other speaking of parties summoned to appear as parties to the dispute. Surely there is a distinction between the two categories, which is deliberate. If we are to imply a power, it must be severely limited to the wordings of the particular provision from which the power is to be implied. In clause (b), there is provision for other parties to be summoned to appear in the proceedings as parties to the dispute. Therefore, the power to be implied is, or must be, the power to summon other parties to appear in the Proceedings as parties to the dispute. Such parties when summoned, would be deemed to be equal in all respect to the parties already on record. That is to say, they should be treated as parties without being actually made a party thereto, in the sense that no industrial dispute as between that party and the others has been referred for adjudication under Section 10. In my opinion, it is unnecessary to hold that the Tribunal has the power to add necessary or proper parties. It is sufficient to hold that the Tribunal has the power to summon proper and necessary parties to appear in the proceedings as parties to the dispute and upon whom the award will be binding. In fact, the petition made herein by the Union was to summon the Trustees to appear in the proceedings as parties to the dispute, and not for adding them as parties. Clause (b) also has another aspect which is to be considered. There is a power given to summon other parties to appear in the proceedings as parties to the dispute, and settlements through conciliation proceedings as well as awards will be binding upon them, unless the Tribunal records the opinion that they were so summoned without proper cause. This signifies that at or about the time when the summons is issued the "other parties" so summoned to appear in the proceedings as parties to the dispute, should have an opportunity of showing that they were so summoned without proper cause. They may come up and establish that they are neither proper nor necessary parties.

7. That the trustees in this case are proper parties has not been strongly contested. In a decision of the *Labour Appellate Tribunal Shahjahanpur Electric Supply Co.. Ltd. v. Their Employees*[3], it was held that where a Provident Fund is vested in trustees a dispute regarding the change of the Provident Fund rules requires that the trustees should be made

[3](1952) Lab LJ 631

parties to the proceedings. In fact, it was held there that in the absence of the trustees such a dispute cannot be adjudicated upon. While not conceding the point, Mr. Meyer has not pressed his objection in this behalf. In my opinion, they are proper parties, because they are vitally

interested in the rules governing the administration of the Trust, and the Trust Fund, and it is no answer to say that the relationship of employer and workman does not exist between them and the workmen of the company.

8. In the background of the above observations, let us examine the facts as they have arisen in the present case. The trustees of the Provident Fund have not been made parties to the industrial dispute, which has been referred for adjudication. They are proper parties, in whose absence the award may be rendered nugatory. Therefore, it follows that the Tribunal has power to summon the trustees to appear in the proceedings as parties to the dispute. The question is as to whether they have been so summoned. From the facts stated hereinbefore, it would appear that what has actually happened is that the Union prayed that the trustees should be summoned to appear before it, and thereupon, without giving any notice to the trustees they were at once made parties, and summons was served upon them in form D1 which is an appropriate form for asking them to come and give evidence or produce documents. In my opinion, the procedure followed was not in accordance with law. Assuming that the appropriate procedure is to add parties who are necessary and proper parties, the latter part of clause (b) implies that it must be made in a manner which will give an opportunity to those who are sought to be added as parties to show cause why they should not be so added. In my opinion, the proper procedure is to issue summons upon such parties to appear in the proceedings as parties to the dispute, in which event, the party can at once make an application for discharge of the summons. If the proper procedure is to add such parties, then notice should be given of any application for the addition of such parties, to the parties sought to be added, so that he may come and object to it and attempt to establish that he is neither a proper nor a necessary party. The law requires that such a party should be "summoned to appear in the proceedings as parties to the dispute", I have asked the learned counsel for the respondents as to whether in this particular case such a summons has been issued. Mr. Mukherjee has been constrained to admit that apart from the summons under form D-1, no other summons has been issued. In fact, he admits that no form of summons appropriate to the subject matter has ever been prescribed. He says that this is how the Tribunal acts in such cases. In my opinion, the procedure adopted is all wrong. When the law enjoins that a particular kind of summons should be issued, the Court or a Tribunal cannot substitute another kind of summons in its place and make it achieve the purpose. If no form of summons has been prescribed, appropriate for the purpose, then one might even treat the word 'summons' literally. It would be quite sufficient for the Tribunal to direct such a party to appear in the proceedings as a party to the dispute, after giving it an opportunity of showing that such a direction should not have been given. Mr. Mukherjee argues that in this case the trustees have been made parties and called upon to file their written statement, and therefore, they will have ample opportunity to take such an objection in their written statement. In my opinion, such a procedure is not contemplated. Since clause (b) contemplates that the person summoned to appear in the proceedings as party to the dispute shall have an opportunity to show cause that he was summoned without proper cause, it was certainly not contemplated that he should be compelled to be present throughout the proceedings, and that his objection should be tried together with the whole case upon its merits. This would throw a terrific burden upon such a party, sought to be added. It may be that a party is sought to be added without reason and recklessly. It would not know whether to take the risk of not pleading to the merits, or only to rely upon the preliminary objection. Such a procedure is not contemplated. In my opinion, the law on the point may be summarized thus :-

(1) An industrial dispute under the Act arises between an employer and his workmen,

where the employer is concerned.

(2) Such a dispute can only be referred for adjudication by an order made by the appropriate Government under the Act. There is no express provision in the Act or the Rules framed thereunder, for adding any party to the adjudication proceedings other than parties to the reference, by the adjudicating court or tribunal.

(3) Such a power may be granted by prescribing rules and/or making the relevant provision of the Civil Procedure Code applicable, but so far as it has not been done.

(4) From the provisions of clause (b) Sub-Section (S) of Section 18 of the Act, it is to be implied that the Tribunal has power to summon parties other than parties to the order of reference, to appear in the proceedings as parties to the dispute. This has a reference to proper and necessary parties, and such parties need not necessarily belong to the category of employer or workmen.

(5) The power to be implied from the provisions of clause (b) is to summon such a party. The form of summons has not yet been prescribed, but under sub-section (1) of Section 11, the Tribunal may issue summons in its own form, and follow such procedure with regard to it as it may think fit, until rules framed under the Act deal with such matter.

(6) The form No. D1 is not an appropriate form of summons for that purpose.

(7) Clause (b) of Sub-Section (3) of Section 18, clearly contemplates that not only there should be such a summons but that the party summoned should have an opportunity to show that he has been summoned without proper cause. Such an opportunity is not given when the parry is added as a party without any notice to him, and he is compelled to join in the whole reference proceedings.

(8) It is not necessary to add such a party at all, but it is sufficient to summon such a party to appear in the Proceedings as party to the dispute. However, after the summons has been served, or a show cause notice why such a notice should not be served and he has an opportunity of showing cause, it would not be illegal to put him formally on the record as a party, if the Tribunal thinks that it would be more convenient for the purposes of the adjudication proceedings.

9. That being the law on the subject, it is clear that the order made by the Tribunal on 24-12-1959 is not in accordance with law. The Tribunal has not issued any summons as contemplated by clause (b) of Sub-Section (3) of Section 18 and has not given any opportunity to the petitioner to contest the service of such a summons. He has straightway made the petitioner and the other trustees a Party and then has served the wrong summons namely a, summons to produce documents and give evidence, the service of which was not intended. The Rule is, therefore, made absolute, and a writ of certiorari issued, quashing the said order. The learned Tribunal will now proceed in accordance with law in the light of observations made above. There will be no order as to costs.

Petition allowed.