

KERALA HIGH COURT

Erumeli Estate

Vs

Industrial Tribunal

(C Vaidialingam, J.)

14.07.1961

JUDGMENT

C.A. Vaidialingam, J.

1. In this writ proceeding, Mr. K.P. Abraham, learned Counsel for the writ petitioner, challenges the award of the Industrial Tribunal, Alleppey, in Industrial Dispute No. 48 of 1958. In particular, the learned Counsel attacks the jurisdiction of the tribunal to embark upon an enquiry, which is the subject-matter of issue 1; and there are also attacks made on the findings recorded under issues 6 and 7. The other questions decided under the various issues other than these issues do not arise for decision by this Court.

2. Before I go into the merits of the attack relating to the findings recorded on issues 1, 6 and 7, I will deal with a general attack made by Mr. K.F. Abraham, learned counsel, based upon the provisions of Section 17 of the Industrial Disputes Act. That is, according to the learned counsel, the award has not been published by the State Government within the period mentioned in Sub-section (1) of Section 17 of the Act. The award itself is dated 25 June 1960 and it is seen from Ex. P. 1 that the award has been received by the State Government on 29 June 1960. Under the provision of Sub-section (1) of Section 17, it is provided that the award is to be published in such manner as the Government may think fit within a period of thirty days from the date of its receipt. Therefore, the State Government should have published it within thirty days of the receipt by it, namely, 29 July 1960. But actually it is seen that the award was published only in the State Gazette dated 2 August 1960. Therefore, the contention of Mr. K.P. Abraham, learned counsel. Is, inasmuch as there has been a violation of the provisions of Sub-section (1) of Section 17, which, according to him, is mandatory, the result will be that the award itself is void and therefore no action can be taken on the basis of this award.

3. This contention could very well have been avoided, to say frankly, if the State Government

bad been a little more diligent and had published the award, as they could have done and as they are ordinarily bound to do, within the time mentioned in Sub-section (1) of Section 17. But the question is whether the non-publication of the award within the period mentioned in Section 17(1) really invalidates the award itself.

4. The learned Government Pleader appearing for the State has urged that notwithstanding the use of the expression "shall" in Sub-section (1) of Section 17 and notwithstanding the further direction about the publication within a particular time mentioned therein, the award cannot be considered to be either void or illegal because, according to him, these provisions are merely directory and not certainly mandatory. The use of the word "shall" by itself, it has been held in several decisions of the Supreme Court itself including the recent decision in State of Uttar Pradesh v. Babu Ram A.I.R. 1961 S.C. 951. Is not conclusive. Therefore, the Court will have to consider the general scheme of the Act, as well as the result that will follow from placing a construction one way or other regarding the use of the expression " shall" on the provision made in Sub-section (1) Of Section 17.

5. After considering the contentions of Mr. K.P. Abraham and those of the learned Government Pleader, I am not inclined to accept the contention of the learned Counsel for the petitioner that the mere non-publication within the time mentioned in Sub-section (1) of Section 17 invalidates the award itself. There is nothing in the Act itself to indicate that a publication contrary to the provisions of Sub-section (1) will go to the root of the award itself or will make the award illegal or void. In order to bring into operation the further provisions of Sub-section (2) of Section 17 and the provisions of Section 17A it is highly desirable that the award is published within the time mentioned in Section 17(1) because it is only on such publication that it becomes final under Sub-section (2) and it becomes enforceable under Section 17A after the expiry of thirty days from the date of its publication under Section 17(1). Excepting that a slight delay in publishing the award under Section 17 (1) results in postponing its finality under Section 17(2) or its becoming enforceable under Section 17A, no other consequence flows from the delay and therefore, in my view, the provisions of Sub-section (1) of Section 17 should be considered only to be merely directory and not certainly mandatory. In this view, the first general contention of Mr. E.P. Abraham has to be rejected.

6. The other contentions, as I mentioned earlier, are really based upon the findings recorded under issues 1, 6 and 7. issue related to "payment of wages for a certain number of days in March, June, July and August 1957." There is a subsidiary contention regarding the finding recorded under issue 1 and it is based really upon the provisions of Section 2(k) read with Section 25 of the industrial Disputes Act. That is, according to the learned counsel, even assuming there has been a refusal to give employment for the periods in question, it will amount

at the most only to this, that the employer will be found to pay compensation on the basis that there has been a lay-off. In this case, it is also the contention of Mr. K.P. Abraham, that the union itself insisted only a compensation being paid on this basis. Therefore, Mr. Abraham alternatively urged under this head of attack, that in any event, the tribunal erred in awarding full wages for all these days during the months in question instead of fixing compensation on the basis of a lay-off. At this stage I may mention that in the view that I take about Mr. Abraham's contention on issue 1 a consideration of this question may not become necessary. But even otherwise, if it becomes necessary, I am not inclined to accept his contention for this reason. The plea that was advanced before the tribunal by the management was not that the employees will be entitled, if at all, to compensation under Section 25 of the Industrial Disputes Act but a more specific case was pleaded, namely, that during the days when there was no work due to the rainy weather the employer offered alternative employment to the workmen which was not accepted. That contention, according to the tribunal, the employer has not been able to prove. Therefore, if I am not accepting the main contention of Mr. Abraham on issue 1, the subsidiary contention will stand rejected and the award will have to be confirmed in that respect also.

7. The main ground of attack urged by Mr. Abraham is that the industrial tribunal had no jurisdiction to enquire into this matter covered by issue 1 and pass an award inasmuch as there has been a conciliation settlement between the members represented by one of the unions, namely, the High Range Estate Employees' Association, on this matter. In that settlement; proceeding, the said association has not pressed its right to claim wages for this particular period covered by issue 1. Therefore, Mr. Abraham urged that the conciliation agreement entered into by the management with one of the unions which consists of some of the tappers and factory workers of this estate will nevertheless be binding on the present union also which has raked up the matter, namely, the Akhila Kerala Plantation Labour Union also.

8. In order to appreciate this contention of Mr. K.P. Abraham, certain facts will have to be stated. There is no controversy that in this estate there are three unions functioning, namely, (1) the High Range Estate Employees' Association;

(2) the Thirucochi Thottam Thozhilali Union, and (3) the Akhila Kerala Plantation Labour Union.

There is also no dispute that all the tappers and factory workers employed in this estate are members of one or the other of these unions. It is the case of Mr. K.P. Abraham that when several other questions including the question of payment of wages for the periods covered by issue 1 was raised by the High Range Estate Employees' Association, there was a conciliation proceeding and in the conciliation proceeding there was an agreement arrived at by the

management and the said union in and by which the said union, so far as this claim is concerned, agreed not to press the same. Therefore, Mr. K.P. Abraham urges that the tribunal in this case has no jurisdiction to consider the matter again. In support of this contention Mr. Abraham drew my attention to the recent decision of the Supreme Court in Ramnagar Cane and Sugar Co. v. Jatin 1931 I L.L.J. 244 and he also urged that the decision of the industrial tribunal at Madras in Trichy District Motor Workers' Union and others v. T.S.T. Co. 1960 I L.L.J. 665 and relied upon by the industrial tribunal in this case is not correct in view of the Supreme Court decision adverted to earlier. I will advert to the decision of the Supreme Court presently.

9. The learned Government Pleader appearing for the State and Mr. M.P. Menon, learned Counsel appearing for the union, in view of this decision of the Supreme Court, found considerable difficulty in supporting the award relating at any rate to issue 1. But the learned Government Pleader urged that the question as to whether the conciliation settlement pleaded in this case can be considered to be a settlement as denned under the provisions of this Act has not been gone into by the tribunal. Mr. M.P. Menon, on the other hand, adopted a different line of approach, namely, that even assuming there has been an agreement between the High Range Estate Employees' Association and the management which included also giving up the wages for the particular period in question, that agreement, according to him, will be void under the provisions of the Minimum Wages Act and that aspect, though not adverted to by the tribunal, can be taken into account by this Court to uphold the award.

10. I have no hesitation in rejecting the contention raised by both the Government Pleader as well as Mr. M.P. Menon. That settlement stated to have been effected between the High Range Employees' Association and the management in this case, apart from containing the signature of the parties is also signed by the assistant labour officer. The question raised by the learned Government Pleader as to whether the assistant labour officer is a person competent to effect conciliation is a matter which does not appear to have been in controversy before the tribunal. Again, the contention raised by Mr. M.P. Menon that the conciliation should be considered to be void because of the provisions of the Minimum Wages Act does not also appear to have been raised before the tribunal. Therefore, I will have to proceed on the basis that parties assumed that there has been a conciliation settlement entered into between the management and the High Range Estate Employees' Association.

11. Therefore, the question will be what is the effect of the conciliation settlement entered into, no doubt between only the High Range Estate Employees' Association and the management, regarding the contention now urged by the Akhila Kerala Plantation Labour Union which was not a direct party to the settlement proceedings. That is a pure question of law.

12. The grounds on which the tribunal has attempted to get over the effect of the settlement are:

(1) The High Range Estate Employees' Union had made the demand only subsequent to the demand made by the present union. This reasoning does not at all appeal to me and it has absolutely no relevancy to the question to be considered.

(2) In the conciliation conference that preceded the settlement the workers represented by the Akhila Kerala Plantation Labour Union were not present. (As a statement of fact this is correct. What is the effect in law has not been appreciated by the tribunal and it will be considered by me presently.) (3) The third reason given by the tribunal is that the Akoila Kerala Plantation Labour Union was not a party to the aforesaid settlement. That is practically a subsidiary reason given under heading (2).

That is, reasons (2) and (3) are to the effect that the Akhila Kerala Plantation Labour Union was not present before the conciliation officer and was not a party to the agreement entered into by the management with the High Range Estate Employees' Union. Therefore, the legal effect of the Akhila Kerala Plantation Labour Union not appearing before the conciliation officer or the fact that it is not a party to the conciliation agreement will have to be considered by me.

13. No doubt, the industrial tribunal refers to a decision of Mr. Ramaswami Gounder as industrial tribunal in Madras whose award is reported in Trichy District Motor Workers Union and Ors. v. T.S.T. Co. 1960 I L.L.J. 665. In view of the Supreme Court decision, to which I am going to make a reference, it is really unnecessary for me to refer to the decision of the Madras industrial tribunal. No doubt, the reasoning contained in the decision of Mr. Ramaswami Gounder does support the view adopted by the tribunal in this case that the effect of the Akhila Kerala Plantation Labour Union not being a party to the conciliation proceedings is that the conciliation proceedings will not bind the association also. It is not really necessary for me to consider the reasons given by Mr. Ramaswami Gounder and I should say that those reasons should be stated to be incorrect in view of the principles laid down by the decision of the Supreme Court in Ramnagar Cane and Sugar Co. v. Jatin 1961 I L.L.J.244.

14. I may immediately consider the decision of their lordships of the Supreme Court in Ramnagar Cane and Sugar Co. v. Jatin 1961 I L.L.J. 244 (vide supra). No doubt the question that arose before their lordships was as to whether a particular set of workers who went on strike can be considered to have gone on strike when the conciliation proceedings were pending. If they had struck work when the conciliation proceedings were pending, they will certainly be guilty of going on an illegal strike under the provisions of Section 24 of the Industrial Disputes Act read with Section 22 or Section 23. In order to exactly appreciate the scope of the decision of their

lordships the circumstances under which the matter came before their lordships will have to be stated in the Ramnagar Cane and Sugar Company which is the management in that case there were two unions functioning, namely, the Ramnagar Cane and Sugar Company Employees' Union, which is described by the learned Judges as the employees' union and another set of workmen belonging to a rival union called the Ramnagar Sugar Mills Workers' Union called the workers' union and I will also use the same expressions when describing those unions in this judgment.

15. The workers' union appears to have presented a charter of demands to the management on 9 December 1953. The employees' union again made a charter of demands on 20 January 1954. On the same day, i.e., 20 January 1954, the workers' union served a notice on the management in that case, of strike. On 1 February 1954 a meeting was held by the conciliation officer which was attended by the management and the employees' union alone though notice had been served also on the workers' union. Subsequently, the management appears to have suggested to the conciliation officer that it may be desirable to discuss the subject of the dispute separately with the representatives of the two unions. But it is seen that the workers' union did not agree to the suggestion and as such they proceeded on the basis that the conciliation proceedings had failed. Consequently, on 3 February 1954, the conciliation officer sent a report under Section 12, Sub-section (4), of the Act about the failure of conciliation with the workers' union only. Notwithstanding this report, the proceedings by way of conciliation with the employees' union and the management continued and on 25 February 1954 the management and the employees' union in that case arrived at a settlement which was recorded in due form by way of an agreement. In the meanwhile, that is, on 13 January 1954, the workers' union commenced a strike. It was this strike which, according to the management was illegal. Naturally action was sought to be taken under Section 11 of the provisions of the West Bengal Security Act. Therefore, the question that had to be considered was as to whether when the members of the workers' union commenced a strike on 13 February 1954, the strike was pending conciliation proceedings. The contention on behalf of the workers' union was that inasmuch as they had already withdrawn from the conciliation proceedings from 3 February 1954 they were not parties to any further conciliation proceedings and therefore when they went on strike there were no conciliation proceedings pending and in consequence the strike itself is not illegal. This contention found favour both with the magistrate as well as the High Court at Calcutta. But by special leave the matter was taken to the Supreme Court by the management. It is in considering this question that their lordships had to advert to the scheme of the Industrial Disputes Act and in particular to the provisions of Section 18 of the Act. In this case, the contention of Mr. K.P. Abraham is that a conciliation settlement, no doubt, entered into by the High Range Estate Employees' Union with the management will nevertheless be binding on the union which has

taken up the cause by virtue of Clause (d) of Sub-section (3) of Section 18 of the Industrial Disputes Act. The matter, if I may say so with great respect has been put pointedly by Mr. Justice Gajendragadkar delivering judgment on behalf of the Court. Regarding the scope of Section 18, at pp. 247-248 the learned Judge observes:

It is now well settled that an industrial dispute can be raised in regard to any matter only when it is sponsored by a body of workmen acting through a union or otherwise. When an Industrial dispute is thus raised and is decided either by settlement or by an award, the scope and effect of its operation is prescribed by Section 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in Clauses (a), (b), (c) and (d) of Sub-section (3). Section 18 (3)(d) makes it clear that where a party referred to in Clause (a) or (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently became employed in that establishment or part, would be bound by the settlement. In other words, there can be no doubt that the settlement arrived at between the appellant and the employees' union during the course of conciliation proceedings on 25 February 1954, would bind not only the members of the said union but all workman employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival union. In order to bind the workmen it is not necessary to show that the said workmen belong to the union which was a party to the dispute before the conciliation. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in Section 18, Sub-section (3). In this connexion we may refer to two recent decisions of this Court where similar questions under Sections 19(6) and 33(1)(a) of the Act have been considered. Vide *Associated Cement Companies, Ltd., Porbander v. their workmen*. Civil Appeal No. 404 of 1958 dated 3 March 1960 [1960 I L.L.J. 491] and *New India Motors (Private), Ltd. v. K.T. Morris*, Civil Appeal No. 124 of 1960 dated 22 March 1960 [1960 I L.L.J. 551].

16. Therefore it will be Been from the extract quoted above that according to their lordships, in order that a conciliation agreement may bind the workmen it is not really necessary to say that the said workmen belonged to a union which was actually a party to the dispute before the conciliator and it is the further view of their lordships that the whole policy of Section 18 is to give an extended operation to the settlement arrived at in the case of conciliation proceedings and

that is the object with which the four categories bound by the settlement are specified in Sub-section(3) of Section 18. Again, the learned Judges at p. 248 observe:

In our opinion, this construction would be consistent with the specific provisions as to the effect of conciliation settlements prescribed by Section 18(3)(d) and is harmonious with the general policy of the Act; otherwise, it will unnecessarily disturb industrial peace, if one union employed in a public utility service is allowed to go on strike even though demands common to the members of the said union as well as the rest of the workmen are being considered in conciliation proceedings between the said employer and his other employees represented by another union.

17. Therefore, it will follow that the fact that the Akhila Kerala Plantation Labour Union was not a party to the conciliation agreement entered into between the management and the High Range Estate Employees' Association will not in any way make the conciliation agreement not binding on this labour union as such. It will also follow that according to the principles laid down by the Supreme Court that a conciliation agreement in respect of common matters pertaining to the employees of the establishment though settled between one union and the management will be binding on all other unions in which the class of employees are more or less the same. Therefore, the various reasons given by the industrial tribunal in this case for coming to the conclusion that the conciliation agreement is not binding on the Akhila Kerala Plantation Labour Union fall to the ground and hence I have to hold that the award of the industrial tribunal regarding issue 1 cannot be sustained. Therefore Mr. K.P. Abraham's contention in this regard will have to be accepted.

18. The further attack that is made by Mr. K.P. Abraham, as I mentioned earlier, is on the findings recorded by the tribunal on Issues 6 and 7. Issue 6 related to payment of gratuity to the dependants of deceased workman and issue 7 related to payment of gratuity to the aged and disabled workmen. It is really unnecessary for me to reiterate what exactly is the principle underlying the provision being made for gratuity and framing of schemes of gratuity because those matters have been already considered by their lordships of the Supreme Court in earlier cases. After referring to all these decisions I have also considered this matter in O.P. No. 245 of 1958. It has to be borne in mind that the true character of gratuity, though it was treated as a payment gratuitously made by an employer at his pleasure, is now at any rate as a result of a long series of decisions, that term has now come to be regarded as an allotment claim which the workmen can make and in proper cases can even give rise to an industrial dispute. It must also be remembered that gratuity is paid to a workman after retirement whether the retirement is due to superannuation or physical disability. Having due regard to the various principles referred to above, the Question is when the industrial tribunal framed the scheme for gratuity under these two different heads it has acted in any way illegally or without Jurisdiction.

19. Mr. K.P. Abraham urged that the jurisdiction of the industrial tribunal is very much limited and that should be found in the terms of reference made to the tribunal by the order of the Government. In this case Mr. K.P. Abraham stated that the issue that is referred is regarding gratuity to the dependants of deceased workmen. That expression "dependants of deceased workmen," according to Mr. K.P. Abraham, must really have relation to the definition of the "dependants" found in the Workmen's Compensation Act. Although that was the specific issue raised, Mr. K.P. Abraham urged that the scheme that is framed by the tribunal goes far beyond the terms of reference and directs payment of gratuity to the heirs, executors or nominees. It is not possible for me to accept this contention of Mr. K.P. Abraham. Whatever may be the definition of the expression "dependant" in the Workmen's Compensation Act, 1923, that, in my opinion, has no relevancy when considering the terms of reference under issue 6. In my opinion, what is intended is a general provision of gratuity for the heirs of the deceased workmen and that is what exactly has been provided for in Clause (1) of the scheme framed by the industrial tribunal as such.

20. The farther contention of Mr. K.P. Abraham is that issue 7 again limits the jurisdiction of the tribunal to consider the question of payment of gratuity to the aged and disabled workmen whereas, according to Mr. K.P. Abraham, here the tribunal has committed an illegality in framing a general scheme for gratuity not to aged and disabled workmen alone but really to all the workmen concerned. Even here I am not inclined to accept the contention of Mr. K.P. Abraham. Both issues 6 and 7, in my view, raise the general question of gratuity payable to workmen of this concern though, no doubt, the expression "aged and disabled workmen" or the expression "dependants of deceased workmen" is used in issue 7 and issue 6 respectively. But that, in my view, does not really take away the jurisdiction of the industrial tribunal especially when it has to deal with a provision being made for gratuity as such. No doubt, Mr. K.P. Abraham placed before me certain decisions to show that the jurisdiction will not extend to such matters under Section 10(4) of the Industrial Disputes Act. I am not inclined to accept this contention either. In fact, when a similar contention was urged before me in O.P. No. 245 of 1958, I was not there also inclined to accept that contention and in my view in the circumstances of this case, the tribunal has certainly got jurisdiction to frame a proper scheme having due regard to the financial condition of the employer. In this case, it has adverted to the financial capacity of the employer and it is only after a consideration of the relevant materials placed before it that it has ultimately framed a scheme which, in my view, is not only necessary but highly desirable also to prevent any possible friction between an employer and the employees.

21. No doubt, Mr. K.P. Abraham made some attack against the particular clauses in the scheme also. The only clause which I thought requires some modification is Clause 6 which related to

gratuity being payable to any workman who is dismissed for misconduct involving financial loss to the estate. But the Supreme Court in its decision in *Garment Cleaning Works v. its workers* 1961 I L.L.J. 513 had to consider the scope of a Clause wherein it was provided that if the workman is dismissed or discharged for misconduct causing financial loss, gratuity to the extent of the loss should not be paid to the workman concerned. In considering that clause the learned Judges observe:

If gratuity is earned by an employee for long and meritorious service, it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee and even though at the end of such service he may have been found guilty of misconduct which entails his dismissal.

22. Their lordships further reiterate the position that gratuity is not paid to the employee gratuitously and it is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult for their lordships to understand why it should necessarily be denied to him, whatever may be the nature of misconduct for his dismissal. In view of this decision referred to above, any interference with Clause 6 in this case as it stands does not also become necessary.

23. In the result, the writ petition is allowed to this extent, namely, the award of the industrial tribunal Ex. P. 1 in so far as it relates to the findings recorded or directions given in respect of issue 1 will stand quashed and cancelled. In all other respects the writ petition fails and parties will bear their own costs.