BOMBAY HIGH COURT

Suryaprakash Weaving Factory

Vs.

Industrial Court

O.C.J. Appeal No. 5 of 1950

(Chagla, C.J. and Bhagwati, J.)

04.09.1950

JUDGMENT

Chagla, C.J.

1. This appeal arises out of a petition filed for an order under Section 45, Specific Relief Act, requiring the Industrial Court of Bombay to forbear from arbitrating upon certain industrial disputes. Tendolkar J. before whom the petition came in the first instance held that the petition must fail on certain preliminary grounds. An appeal was preferred from that decision and the Court of appeal held that it was competent to the Court to issue an order under Section 45 if it was found that the reference made to the Industrial Court was not a proper reference. Therefore the petition again went back to Tendolkar J. to consider it on merits who finally dismissed it. It is from that order of dismissal that this appeal is preferred.

2. The one short point that has been urged by Mr. Amin on behalf of the petitioners is that Government were not competent to refer the dispute between the petitioners and their employees to the Industrial Court as they purported to do. It is urged by Mr. Amin that Government cannot exercise its powers under Section 73, to refer a dispute to the Industrial Court unless proceedings have been taken under Section 42 (2), Bombay Industrial Relations Act, 1946. The Act, as the preamble states, is put on the statute book for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes. Section 42 (2) requires an employee desiring a change in respect of an industrial matter which is not specified in Schedule I or III to give a notice in the prescribed form to the employer through the representative of the employees who shall forward a copy of the notice to the Chief Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. "Industrial matter" is defined, and that means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and

conditions of employment and includes - (a) all matters pertaining to the relationship between employees and employers, or to the dismissal or non-employment of any person; (b) all matters pertaining to the demarcation of functions of any employees or class of employees. Then there are two other sub-clauses; (c) All matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act; (d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole. "Industrial dispute" is defined, and it means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter. In this case the dispute between the employer and employee was in relation to a matter which was covered by item 9 of Schedule II and that is "wages including the period and mode of payment." Therefore it is perfectly true that if an employee desired a change in respect of his wages, he would have to give a notice under Section 42 (2). The effect of giving the notice would be to commence conciliation proceedings which are provided for under the Act, because Section 42 (2) itself provides that the notice submitted by the employee has to be forwarded to the Conciliator. The Act then provides for conciliation proceedings, and if the conciliation proceedings end in a settlement, that settlement has to be registered in the manner provided under Section 58. Chapter 11 provides for arbitration and under Section 66, an employer and an employee may agree to submit their differences to a named arbitrator. They may also agree to submit the arbitration to a Labour Court or the Industrial Court. Then we come to Section 73 which provides :

> "Notwithstanding anything contained in this Act, the Provincial Government may, at any time, refer an industrial dispute to the arbitration of the Industrial Court, if on a report made by the Labour Officer or otherwise it is satisfied that -
> (1) by reason of the continuance of the dispute -
> (a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or
> (b) serious or prolonged hardship to a large section of the community is likely to be caused; or
> (c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or
> (2) the dispute is not likely to be settled by other means; or
> (3) it is necessary in the public interest to do so.
> "In this case this appeal has been argued on the basis that no proper notice was given of a change under Section 42 (2). As a matter of fact, a notice was given, but the contention of the petitioners was that the notice was not given by a representative of the employees as required by Section 42 (2). The learned Judge did not decide that question as in his opinion Government had the power under Section 73 to refer an industrial dispute to the Industrial Court without a notice of change being given under Section 42 (2).

3. Mr. Amin's contention is that there can be no industrial dispute under the Bombay Industrial

Relations Act, 1946, till a notice of change has been given as required by Section 42 (2). In other words, what he contends is that the power of Government to refer a dispute to the Industrial Court under Section 73 only arises after a notice of change has been given under Section 42 (2). Till such a notice is given, there is no industrial dispute at all and therefore nothing can be referred to an Industrial Court. This contention is made in the teeth of the definition of "Industrial dispute" given in the Act to which we have already referred. As far as the definition is concerned, there is nothing in it to suggest that an industrial dispute only arises after a notice of change is given under Section 42 (2). All that "Industrial dispute" means is any dispute or difference between an employer or an employee which is connected with any industrial matter, and it is not suggested in this case that the present dispute is not connected with an industrial matter. According to Mr. Amin, an industrial dispute starts as soon as a notice of' change has been given, and till that happens neither the provisions with regard to arbitration nor the right of the Government to refer a matter to the Industrial Court can become operative. It is clear from the scheme of Section 42 (2), that a notice of change has to be given in order that conciliation proceedings should follow upon such a notice of change being given. It may be that an employer and an employee may take the view that conciliation proceedings would be fruitless and they may desire to go to arbitration under Section 66 without resorting to the conciliation machinery provided by the Act. But according to Mr. Amin, it would not be open to the employer and employee to do so. Before even they could go to arbitration they must first give a notice under Section 42 (2); then only can they refer a dispute under Section 66 to arbitration. Equally, according to Mr. Amin, as we have pointed out before, the power of Government under Section 73, would only arise after a notice has been given under Section 42 (2). Therefore, even if Government are satisfied that a serious situation has arisen in industry which requires immediate action and which requires immediate settlement, Government would be helpless unless the employee gives a notice under Section 42 (2). Therefore the whole machinery of the Bombay Industrial Relations Act would come to a standstill if for any reason, however wrong that reason may be, an employee does not choose to give a notice of change under Section 42 (2). Mr. Amin's answer is that if without giving a notice he goes on strike, the strike would be illegal under Section 97 of the Act. But Government are interested in promoting the welfare of industry and maintaining cordial relations between the employee and the employer and no useful purpose can be served merely by having an illegal strike on their hands and being in a position to prosecute the employees who have gone on strike. But before an illegal strike is declared, a situation may arise of such gravity that Government may require to have the matter settled by the Industrial Court by referring to it the dispute under Section 73. According to Mr. Amin, the learned counsel for the petitioners, the Government must sit with folded hands, wait till the employee has given a notice under Section 42 (2), before it can resort to its power given to it under Section 73.

4. Mr. Amin is right that if the language of Section 73 was plain and clear we should not be influenced by the consequences that might follow by our interpreting the section according to its plain grammatical meaning. But what Mr. Amin wants us to do is to import into the definition of

"industrial dispute" a qualification which does not exist in Section 73. Section 73, merely refers to the power of Government to refer an industrial dispute to the Industrial Court. Industrial dispute is defined generally in the definition clause, and if one were to interpret "industrial dispute" according to the definition given in the Act, there is nothing to suggest that the industrial dispute referred to is an industrial dispute that commences after a notice is given under Section 42 (2). But Mr. Amin would have it that we should read an industrial dispute in Section 73 as an industrial dispute arising after a notice is given under Section 42 (2). Therefore Mr. Amin wants us to limit and qualify the expression "industrial dispute" used by the Legislature in Section 73. There is no warrant for this interpretation and this interpretation becomes all the more impossible when one realises the curious consequences that must follow if we were to give the interpretation Mr. Amin seeks for. It is also clear, when one looks at other provisions of the Act, that "industrial dispute" is not used in the sense in which Mr. Amin wants us to interpret. Turning to Section 40 (1), it provides that standing orders shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I. Then sub-Clause (2) provides :

> "Notwithstanding anything contained in Sub-Section (1) the Provincial Government may refer, or an employee may apply in respect of, any dispute of the nature referred to in clause (a) of paragraph A of Section 78, to a Labour Court."

5. Therefore, under this sub-clause, the power of the Provincial Government to refer a dispute is circumscribed by the dispute being of the nature referred to in para. A of Section 78. Therefore, when the Legislature wanted to enact the nature of the dispute and to qualify and limit it, it has done so. But in Section 73 we find no limitation or qualification used in the expression "industrial dispute." Then if we turn to Section 34 it seems to us to be a fairly clear answer to Mr. Amin's contention. Sub-clause (6) provides for the duties of the Labour Officer, and one of the duties under sub-Clause (c) is to "report to the Provincial Government the existence of any industrial dispute of which no notice of change has been given, together with the names of the parties thereto." Therefore this sub-clause clearly suggests that there may be an industrial dispute before a notice of change has been given. Mr. Amin says that this only refers to those cases where no notice of change has to be given. We cannot accept that contention because if that were so it would not be necessary specifically to provide in this sub-clause "of which no notice of change has been given." This clearly means that no notice of change has been given when notice of change is required, and reading Section 34 (6) (c) along with Section 73 which provides that the Government may refer an industrial dispute to the Industrial Court either on a report made by the Labour Officer or otherwise if it is satisfied - and the various grounds of satisfaction are then set out -, it is clear that if Government receives a report from a Labour Officer under Section 34 (6) (c) that there is existence of an industrial dispute although it has not taken the shape of a notice being given under Section 42 (2), Government may act on that report and refer the dispute to the Industrial Court. Similarly, as we have pointed out before, the Chapter with regard to arbitration, chap. 11, refers to any present or future industrial dispute and is entirely outside the

scope of chap. 8 which deals with changes and how changes may be legally brought about under Section 42 (2).

6. Looking to the whole scheme of the Act and particularly to the language used in Section 73, in our opinion it is not possible to contend that the power of the Government to refer an industrial dispute to the industrial Court or to a Labour Court is confined to those cases where an industrial dispute has taken the form of a notice of change being given by an employee as contemplated by Section 42 (2).The power of the Government is untrammelled and it can refer any industrial dispute to the Industrial Court provided it satisfies the conditions laid down in that section.

7. The result is that we agree with the learned Judge below that the Industrial Court is competent to deal with the reference made to it by the Government under Section 73. The appeal fails and must be dismissed.

8. With regard to costs, Tendolkar J. directed that the petitioners should pay to respondent 2 and the Province of Bombay one-half of their costs. Mr. Amin has asked us to reverse this order and to direct that there should be one set of costs as between respondent 2 and the Province of Bombay. The contention of Mr. Amin is that the Province of Bombay was not a party to the petition, that he did not bring it to Court, but the Province of Bombay appeared in Court in response to a notice issued by the Court. There is no doubt that the presence of the Province of Bombay was necessary inasmuch as the validity of an order issued by the Province of Bombay was in question. But as the order for costs has been made in the exercise of the learned Judge's discrection, we do not think any sufficient ground has been advanced which would induce us to interfere with that discretion. With regard to the costs of the appeal, Mr. Amin has urged that only one set of costs should be awarded as between the Advocate-General appearing for the State and Mr. Buch appearing for respondent 2. We see no reason why Mr. Buch, who was a party to the petition and a party to the appeal, should be in any way deprived of his full costs. The proper question is as to whether the Advocate-General is entitled to his costs. Now it was open to Mr. Amin not to have served the notice of appeal upon the Advocate-General, or in the alternative he could have served him with a notice and could have intimated to him that if he chose to appear he should appear at his own risk as to costs. But far from doing that, in the memo of appeal he has made a ground that the order of costs of the learned Judge was wrong and that Government should pay the petitioners' costs of the petition. Therefore, it was incumbent upon the Advocate-General to appear in this appeal in order to resist this claim made by the petitioners in the memo of appeal.

9. Under these circumstances we would dismiss the appeal with costs. Two sets of costs, one to the State of Bombay and the other to respondent 2.
Appeal dismissed.