

# **BOMBAY HIGH COURT**

Vasant Vithal Palse

Vs

The Indian Hume Pipe Co. Ltd

(D Madon, C.J. N Abhyankar, J.)

15.11.1968

## **JUDGMENT**

### **N. Abhyankar, J.**

1. This is a petition by four workmen under Article 227 of the Constitution challenging certain portions of an award passed by the Industrial Tribunal presided over by Shri M. R. Meher. The petitioners have impleaded to this petition as respondents the employers, namely, the Indian Hume Pipe Co., Ltd. and the Presiding Officer of the Tribunal whose award is challenged.

2. It appears that there was a dispute between the first respondent and its workmen regarding several demands which were raised by the workmen for pay-scales, adjustments, leave to canteen workmen, allowance of work on holidays, transfers, gratuity, etc. The workmen, it appears, were represented before the Tribunal by the Trade Union called the Engineering Staff Union". The award was passed on December 6, 1965 and was published on December 30, 1965. The petition in this Court was filed by these four workmen on April 12, 1966. In paragraph 55 of the petition the petitioners have made the following averments :-

"The impugned award was made and published in the Official Gazette on 30th December, 1965. The petitioners approached their Trade Union for taking these proceedings but the Union leaders appeared to be reluctant to take these proceedings. They asked the petitioners to take legal opinion on their own and get a petition drawn for filing. The Union leaders informed the petitioners that only after reading the draft of this petition the union would consider whether it would make the financial arrangements for their expenses. Ultimately on or about the 15th of February, 1966, the petitioners obtained a draft from their Advocate and gave it to their Union Secretary. Despite repeated requests thereafter the Union Secretary did not advise the petitioners regarding the reaction of the managing committee of the Union. Ultimately on or about 7th of April, 1966, the petitioners collected funds from the salaries of those of the workmen who desired to support this petition and proceeded to file this petition. The delay in filing this petition

was caused by reason of the abovesaid circumstances. The petitioners, therefore, pray that the delay, if any, in making this petition may be condoned."

3. A preliminary objection is raised on behalf of the respondents to the competency of this petition in this Court at the instance of the four workmen on the ground that the Engineering Staff Union, which represented all the workmen before the Tribunal, had filed a petition for special leave to appeal against the award before the Supreme Court on March 29, 1966. This petition for special leave was dismissed by the Supreme Court on August 1, 1966. The present petition in the High Court, therefore, it is claimed, could not have been filed or in any case is no longer tenable in view of the highest Court in the land having refused to exercise its discretionary jurisdiction in entertaining an appeal against the award. It is also suggested that the challenge to the award, as raised in the present petition, was identical, both in respect of the averments and objects, with the petition for special leave to appeal filed in the Supreme Court. The respondents have filed a comparative statement as Annexure I showing paragraph by paragraph how there is an identity of averments in both these petitions, that is, the petition in the High Court and the petition for special leave in the Supreme Court.

4. With regard to this objection raised on behalf of the respondents, the petitioners urge that every workman has an independent right to challenge the award so far as it affects him and the mere fact that the Trade Union, to which the workmen belong, has taken the matter to the Supreme Court by filing a petition for special leave to appeal against the award does not affect the right of the individual workman to take appropriate proceedings under the Constitution for challenging the award. It is also urged that the dismissal of the petition for special leave to appeal to the Supreme Court does not affect the right of the individual workman to file or prosecute his remedy under the Constitution in the High Court or anywhere else. In this context, reliance was placed on a Division Bench decision of the Madras High Court reported in A.I.R. 1958 Mad. 398 *The Management of Western India Match Co. Ltd., Madras v. The Industrial Tribunal, Madras and another*.

5. In our opinion, the contentions raised on behalf of the respondents are well-founded and must be accepted. We have reproduced the text of the averments of the petitioners in paragraph 55 where, if it may be so described, a sly reference is made to the approach to the union for making an application. We are unable to hold that any officer of the union would have misled any of the petitioners by refusing to disclose that they were contemplating to file a petition for special leave to the Supreme Court or the fact that such an application was filed. The petitioners have also averred that the draft of their application for a writ in this Court, prepared on their behalf for filing in the High Court, was itself taken as a model for the petition for special leave filed by the Union. Whether this is so or not we are not in a position to decide but the facts disclosed do not permit any conclusion other than this that the petitioners could not have been unaware that a

petition for special leave to appeal to the Supreme Court was filed. This fact was disclosed only in the return filed on behalf of the respondents. In fairness one should have expected the petitioners themselves to bring this fact to the notice of this Court, at any rate, after the petition was filed or when petition was admitted; but for the circumstance that an application for special leave to file appeal to the Supreme Court comes to be disclosed by the contesting respondent, in case that respondents were not to enter appearance and the proceedings were required to be decided ex parte, this fact would never have been brought to the notice of this Court. It is only fair that a citizen invoking the extraordinary jurisdiction of this Court should place all the facts and circumstances in respect of the particular litigation before the Court and if this obligation is not observed, the petitioner is certainly guilty of suppression.

6. We also are unable to hold that we should entertain this petition now and adjudicate it on merits when the Supreme Court has thought fit not to admit the petition for special leave to appeal against the very award which is under challenge in this petition. So far as this aspect is concerned, we would prefer to quote the observations of the Division Bench of the Madras High Court which was relied upon in another context by the learned counsel appearing for the petitioners. The Division Bench, with regard to the propriety or desirability of entertaining a petition by the High Court in respect of a matter in which an application for special leave to appeal to the Supreme Court was rejected, has dealt with the following manner :-

"That the Supreme Court declined to exercise its discretion in favour of the petitioner appears to us to be a factor that ought to be taken into account and given due weight, when we are called upon to exercise our discretion in favour of interference with the award of the Tribunal on some of the very grounds specified in the application for leave to appeal that failed. It should be needless to emphasise that had leave been granted - and that was the stage for the exercise of the discretion vested in the Supreme Court - the scope of the appeal could have been much wider than that permissible in proceedings under Act. 226 of the Constitution."

7. Thus, in our opinion, this is not a petition which could have been entertained or in any case these are not the circumstances in which we should be inclined to adjudicate on the merits of the award in view of the petition filed on behalf of the Union which represented the petitioners also was filed before the Supreme Court and was rejected.

8. In the result, in our opinion the only order that can be passed is that this petition is rejected. In the circumstances, however, we do not make any order as to costs.

