PUNJAB AND HARYANA HIGH COURT

Dalmia Dadri Cement Ltd

Vs

Mazdoor Ekta Samiti

Civil Writ No. 323 of 1968

(R.S. Narula, J.)

30.04.1968

JUDGMENT

Narula, J.

1. In this petition under Articles 226 and 227 of the Constitution of India, Messrs Dalmia Dadri Cement Limited, Charkhi Dadri (District Mahendragarh), hereinafter referred to as the employer, has impugned the orders of respondent No. 5, Shri K.L. Gosain, Presiding Officer, Industrial Tribunal, Haryana, (i) entertaining additional demands put in by the Cement Factorymen's Union (respondent No. 2) by his order, dated January 11, 1968; (ii) refusing to shift the burden of an issue on August 23, 1967; and (iii) reviewing on November 29, 1967, his earlier order directing the disposal of issue Nos. 1 to 4 as preliminary issues and ordering all the issues to be disposed of together. The other points urged by the petitioner are, more or less, of ancillary character. The facts giving rise to the filing of the petition are these.

2. By notification, dated January 27, 1967 (annexure 'I'), the Governor of Haryana referred, under section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter called the Act), an 'industrial' dispute, which existed between the employer on the one hand and its workmen on the other, to the Industrial Tribunal, Haryana, constituted under section 7-A of the said Act. The matters referred to the Tribunal were specified in the notification in the following words :

> (1) Whether all the workmen (employed by the company directly or through contractors) who have completed one year service with the company should be granted annual increments. If so, with what details and from what date ?
>
> (2) Whether Shri Bhim Singh should be designated as Hopperman and paid accordingly ? If so, with what details and from what date ?
>
> (3) Whether the following workers should be made permanent ? If so, with what details and from what date ?
>
> (1) Phul Singh, Blacksmith.

(2) Surja, son of Kalia, Helper.

(3) Lal Chand, son of Sheo Ram, Helper.

(1) Whether every workman who works in a dusty place should be supplied with cloth headcovers ? If so, with what details ?

3. Copies of the notification were endorsed to the employer and to the General Secretary/President, Mazdoor Ekta Samiti, Charkhi Dadri (hereinafter referred to as the Samiti), as the reference had been made at the instance of the Samiti. Before the Tribunal, the workmen filled their claim petition, dated March 14, 1967 (annexure II,), in reply to which the employer filed a written statement, dated April 11, 1967 (annexure III), wherein following two general preliminary objections were taken -

(1) The statement of claim of the Union is absolutely vague and lacking in material particulars. The Union may be required to give sufficient particulars and reasons for their demands so that the management may not be taken up by surprise during the course of the trial. The management reserves the right to file a complete reply if and when such particulars are supplied by the Samiti; and

(2) The Mazdoor Ekta Samiti at whose instance the present reference has been made has no *locus standi* to raise an Industrial dispute inasmuch as it has neither representative capacity *qua* the workmen of the Company nor are the workmen for whom relief is sought under the present reference its members. The reference is, therefore, *ultra vires* the powers of the Government and this Hon'ble Tribunal has no jurisdiction to adjudicate on the same.

4. Similarly, it was stated in answer to the claim for grant of increment to employees who had put in more than one year's service that the allegations of the workmen were absolutely vague, as the Samiti had not given the names and particulars of the persons for whom the relief was sought. The employer stated, that it was, therefore, not possible to give a complete reply in regard thereto. In the reply on merits to the third item of claim of the workmen asking for facilities available, to permanent employees being also given with retrospective effect to the following workmen' (and no list of any workmen was given in the claim petition under that item), it was stated that the persons concerned had been appointed as casual workmen for doing jobs of casual nature and had not been engaged on permanent basis. Regarding the ultimate prayer of the workmen contained in their petition, dated March 14, 1967, the employer's position was that the claim under item (i) was beyond the scope of the reference, that the Samiti had not made any claim on behalf of the contractor's workmen and that the Samiti had not given any particulars regarding, the rest of the workmen. On May 10, 1967, the employer submitted an application (annexure IV), referring to the pleas in its written statement about the alleged vagueness of the claim lodged with the Tribunal and further giving details of the matters in respect of which the claim was wanting in detailed particulars and ultimately praying for a direction to the workmen's Unions to file sufficient and better particulars in respect of the matters referred to in the

application. On May 24, 1967, the Tribunal, after considering the pleading of the parties and the application of the employer passed an order directing the workmen who had submitted the claims to file a definite reply (in the form of a replication) by certain date. It was ultimately on July 19, 1967, that the Samiti filed a rejoinder (annexure V) generally traversing the allegations of the employer without furnishing any better or further particulars of the claim.

5. In the meantime, an application was made by the Cement Udyog Karamchari Sangh for being added as a party to the proceedings before the Tribunal. The application was allowed by the order of the Tribunal, dated August 23, 1967, subject to certain objections raised by the counsel for the employer. On the same day, the Tribunal proceeded to frame eight issues, out of which the first four, alone are quoted below :-

> (1) Whether the statements of claims filed by the Unions are vague and if so, what is the effect of the same on the present case ?
>
> (2) Whether the Mazdoor Ekta Samiti has no *locus standi* to raise the industrial dispute which is the subject-matter of this reference ?
>
> (3) Whether the dispute with regard to the workmen employed by the contractor cannot be raised ?
>
> (4) What effect, if any, has the award in reference No. 45 of 1961 on the present case ?

6. Counsel for the employer objected to the onus of issue No. 2 having been placed on his clients. The objection was turned down by the Tribunal in the following words -

> "Dr. Anand Prakash objects to the onus of issue Nos. 2 and 3 but I do not find ground to change the onus. The dispute raised in item No. 1 of the reference is itself an industrial dispute and is not an individual dispute. It does not in my opinion require sponsoring by any particular number of people. The President of the Union at whose instance the case has been referred informed me that half the number of workmen are members of his Union. Dr. Anand Prakash states that he has no idea of the number of workmen who are members of the said Union. He says that he does not know the exact number of such workmen because he has no access to the register of the said Union. He says according to the information of the management, the said Union has very few members."

7. This is the first order which has been impugned by the employer before me.

8. By his order of the same date, the Tribunal then directed the parties to lead their evidence on the first four issues (reproduced above) on September 13, 1967.

9. On September 2, 1967, the employer submitted an application (annexure VI) for disposal of its previous application for better particulars, dated May 10, 1967, and for disposing of issue No. 1 "before proceeding to decide the other issues framed on August 23, 1967" i.e. to decide issue No. 1 as a preliminary issue. The case was then adjourned from time to time for the Samiti to file a reply to the employer's application, dated September 2, 1967, till the matter came up again before

the Tribunal on November 29, 1967. On behalf of the workmen, no reply to employer's application was filed, but the President of the Samiti made a statement to the effect that the claim for increment of workmen who had been working through the contractors was given up. Regarding the names of the directly employed workmen for whom increment had been claimed by the Samiti, its President stated that "the management have got their records and the claim can ascertain from them the workmen who have completed one year service under them." Item No. 1 of the dispute was given up by Shri Y.D. Sharma. Thereupon, Dr. Anand Prakash the learned counsel for the employer, made the following statement before the Tribunal on November 29, 1967.

> "I do not press for better particulars so far as the item number 4 of the dispute is concerned."

10. It may be remembered that item No. 4 related to the claim of the workmen for supply of cloth to cover their heads for working in a dusty place. Thereupon, the Tribunal disposed of the application of the employer for better particulars and the subsequent application for decision of the same by his order of that date (November 29, 1967) to the effect that in view of the statements of the representatives of the parties it was unnecessary to pass any further orders. The said applications of the employer were, therefore, "disposed of in those terms". The second order passed by the Tribunal on the same day read like this -

> "In my order dated 23rd August, 1967, I directed the parties to produce evidence on issue Nos. 1 to 4 only. That evidence has not yet been commenced because in the meantime the management filed some application and about three months have been wasted in disposing of the same. The representatives of the parties admit that evidence is necessary on issues 1 to 3 and I feel that it will be more convenient if evidence is led on all the issues in this case together. The case is getting old and no useful purpose would be served in splitting the evidence and in asking the parties to lead the same at two different stages. Let the parties adduce their evidence on all the issues on the 14th of December, 1967.

11. This is the second order which is being impugned by the employees in this petition.

12. On December 5/6, 1967, the employer had submitted an application (annexure IX) for discovery under Order 11 rule 12 of the Code of Civil Procedure. The prayer in the application, after the general request for discovery, was in these terms -

> "The said President of the Secretary may particularly be required to make discovery on oath of all the following documents and if they are not in his possession to state whether they exist and if so in whose custody and possession they are -
>
> (a) Membership register of the Mazdoor Ekta Samiti from the beginning to the date of the reference together with such membership forms or such other documents as the workmen who are entered on the membership register duly applied for being enrolled as its members.

(b) Constitution of the Mazdoor Ekta Samiti.

(c) The Account Books of the Mazdoor Ekta Samiti, particularly the Ledger and the Cash Book showing membership subscription paid by the alleged members from month to month till the date of the reference.

(d) Any other documents in their possession to prove *locus standi* to raise the industrial dispute."

13. On December 14, 1967, the President of the Samiti undertook to produce all the documents mentioned in the employer's application for discovery and the case was adjourned for that purpose.

14. On December 26, 1967, the employer submitted an application under Order 11 rule 18(2) and section 151 of the Code of Civil Procedure for directing the contesting respondents to produce certain documents and for permission to inspect them. On the application for discovery dated December 5, 1967, an order, dated January 11, 1963 was passed, wherein it was mentioned that Raj Kumar (representative of the Samiti) had brought with him (i) the membership register, (ii) the Constitution of the Mazdoor Ekta Samiti and (iii) the account books mentioned in clauses (a), (b) and (c) of para 3 of the employer's application for discovery (which items have already been reproduced in the preceding paragraph of this judgment). Raj Kumar is then stated to have said that his Union did not get any membership forms filled up from the persons who wanted to become its members. This was the only order passed by the Tribunal on the application of the employer for discovery. Neither discovery as specifically refused nor was any order directing discovery to be made in accordance with law passed.

15. On the same day, i.e. January 11, 1968, the Tribunal disposed of the employer's application, dated December 26, 1967, for inspection on the ground that the employer had not served any notice on the Union to give an inspection of the records mentioned in the application and that in the absence of such a notice an application under Order 11, rule 18(2) was, obviously, premature and the same was accordingly dismissed. The case was then adjourned for evidence of the parties to February 1, 1968. In the same order, it was mentioned that the Dalmia Dadri Cement Factorymen's Union had made an application for being impleaded as a party. Though the said Union had withdrawn from the case at an earlier stage, the Tribunal took the statement of Shri Ramesh Chander, Secretary of the said Union, to the effect that they had withdrawn from the proceedings because their demand notice was then pending disposal; they wanted to be re-impleaded as the Conciliation Officer had not agreed to make a reference on the ground that another reference was already pending, and directed that the said Union be added as a party. Objection raised by the counsel for the employer against the said Union being impleaded was repelled by the Tribunal with the following observations -

"The said objection of Dr. Anand Prakash does not in the circumstances appeal to me to be a sound one. Even if it is assumed that an identical demand is pending conciliation and has not still been rejected, it is better that the said demand is decided in this reference."

16. Before the date fixed for evidence of the parties, i.e., February 1, 1968, could arrive, the employer filed the present writ petition in this Court on January 29, 1968. At the time of

admitting the petition, notice of the application for stay was directed to issue by the Motion Bench. After service of notice on the respondents, when the stay matter came up before Tek Chand, J., on February 5, 1968, it was directed that further proceedings before the Industrial Tribunal, Haryana, are stayed *ad interim* and that the writ petition itself should be set down for hearing in the third week of March, 1968.

17. The writ petition has been contested on behalf of respondent No. 1, i.e., the Samiti. These proceedings have been *ex parte* the other respondents, as they failed to put in appearance in spite of service. Practically, all the material facts relevant for the decision of this writ petition have remained uncontroverted in the return of the Samiti.

18. So far as the first prayer of the employer, which was pressed before me by their learned counsel Dr. Anand Prakash on the basis of the judgment of the Supreme Court in *Burma-Shell Oil Storage and Distributing Company of India Limited and others v. Bengal Oil and Petrol Workers' Union*[1], is concerned, it was fairly and frankly conceded by Mr. R.S. Mittal, the learned counsel for the Samiti, that the Tribunal has no jurisdiction to entertain or adjudicate upon any claims contained in the demand notice of the Cement Factorymen's Union (respondent No. 2) which are not already the subject-matter of the reference made by the Government. A direction will issue to the Tribunal to this effect. Subject to this reservation, the employer did not raise any specific objection before me to the name of the second respondent continuing in the array of opposite parties before the Tribunal.

19. Dr. Anand Prakash submitted that the normal rule of evidence about the burden of proof of an issue being placed on the party in whose possession the relevant material for proving or disproving that issue is excepted to be available, should have been followed by the Tribunal. He argument of the learned counsel was that the *locus standi* of the Samiti depended on the membership of the workers of the employer who might have been members of the Samiti on the relevant date and the evidence to prove this fact could be available only with the Samiti. Counsel submitted that the employer could only attempt to rebut the evidence that might have been led by the Samiti but it was impossible for the employer to lead any evidence in the affirmative on issue No. 2. Counsel referred to the judgments of the Madras High Court in the *Kandan Textiles Limited v. The Industrial Tribunal, etc*[2]. and in *Nellai Cotton Mills, Tirunelvella v. Labour Court, Madurai, and another*[3], and argued that it was for the Samiti "to have made out the ingredients requisite for the purpose, namely, that a substantial number of the employees" of the employer took part in claiming the relief in dispute (the quotation is from the judgment of the Madras High Court in. Nellai Cotton Mills' case). He then referred to the following observations in the judgment of Hegde, J. which the learned Judge wrote for the Division Bench of the Mysore High Court in *P.M. Murugappa Mudallar Rathina Mudallar and Sons v. Raju Mudallar (P.) and others*[4],:-

> "It is for the party who contends that the dispute is an 'industrial dispute' to establish that fact."

20. Reference was also made to the judgment of a learned Single Judge of the Andhra Pradesh High Court in *Shri Kripa Printing Press v. Labour Court and another*[5], wherein it was held that "when the validity of the reference relating to a single workman is challenged on the ground that

what is referred is only an individual dispute and not 'industrial dispute', it is not for the employer to establish that the dispute is not an 'industrial dispute'. It is for the workman to show that his cause has been sponsored by his union or by a number of workmen of his class." This was a case where the dispute related to sponsoring the cause of an individual workman.

21. Counsel then referred to the judgment of Shamsher Bahadur, J. in *Khadi Gramodyog Bhawan Workers' Union v. E. Krishna Murti and another*[6], and the appellate judgment of Mahajan and S.K. Kapur, JJ. upholding the order of the learned Single Judge in *Khadi Gramdyog Bhawan Workers' Union v. Shri E. Krishnamurthy and another*[7],. I have noticed the arguments, of the learned counsel in this behalf as well as the authorities cited by him in fairness to the petitioner. It is, however, wholly needless to go into this matter, as I am firmly of the opinion that no petition under Article 226 or Article 227 of the Constitution is maintainable merely in order to shift the burden of an issue however erroneous the view of a Tribunal in the matter of placing *onus probandi* may be. All that burden of proof means in an ultimate analysis is as to who has the right to begin leading evidence. An order placing onus of an issue on a particular party is hardly a matter to be interfered with by this Court even in a petition for revision under section 115 of the Code. The jurisdiction of this Court under Article 227 is no wider in this respect. Nor is it a matter for which the extraordinary jurisdiction of this Court under Article 226 can be invoked. The Tribunal had the jurisdiction to place the burden of the issue in dispute (issue No. 2) on any of the two parties according as the Tribunal had thought fit and proper in the circumstances of the case and I regret I am unable to find my way to interfere with the same in these proceedings.

22. The third grievance of the employer relates to the order of the Tribunal directing the trial of all the issues together and reviewing its earlier order for adjudicating upon issue Nos. 1 to 4 before entering on the trial of the remaining issues. Dr. Anand Prakash referred to the observations made in the Division Bench judgment of the Mysore High Court, in the case of P. M. Murugappa Mudallar and Sons (supra) to the effect that "if the jurisdiction of the Labour Court is challenged by the employer.....on the ground that the dispute is an individual dispute, then the Labour Court must first go into the question whether the dispute is an 'industrial dispute' or not; the existence of an industrial dispute is a jurisdictional fact; unless the Labour Court finds the dispute to be an 'industrial dispute', it cannot proceed to determine the dispute referred to it."

23. Reference was then made to the Division Bench judgment of this Court (Mehar Singh, C.J. and Mahajan, J.) in *The Management of the Karnal Distillery Company Limited v. The Workmen of Karnal Distillery Company Limited and another*[8] , where it was held that a Tribunal constituted under the Industrial Disputes Act can only entertain an 'industrial dispute' as defined in section 2(k) of the Act and if what is referred to the Tribunal is not an 'industrial dispute', the Tribunal *per se* will have no jurisdiction to determine the same. In the course of that decision, Mahajan, J. who wrote the judgment of the Court, observed as follows -

> "Therefore, it appears to us that before a Tribunal can proceed to determine an alleged dispute on the merits, it has got to determine, if an objection is raised, whether there is or there is not an industrial dispute. If the Tribunal can determine whether there is no industrial dispute in the case of individual dispute, we see no reason why the Tribunal cannot determine even in the case of a collective dispute that in fact there is no dispute

....."

24. It is needless to multiply authorities on this point. It does stand to reason that when an objection to the existence of an industrial dispute as such is raised by the employer, and an issue in that behalf is framed by the Tribunal, it is simply fair and proper and in consonance with the principles of nature justice that such an issue should be decided as a preliminary issue so that time of the Tribunal and of all concerned is not wasted in recording evidence on other issues on which the Tribunal is ultimately unable to pronounce any judgment if it finds at the end of the trial that there is nothing which it could try as there was no industrial dispute before it within the meaning of clause (k) of section 2 of the Act. The observations of Hegde, J. in the Division Bench judgment of the Mysore High Court in P. M. Murugappa Mudallar Rathina Mudallar and Sons' case, and of Mahajan, J. in the Division Bench judgment of this Court in the Management of the Karnal Distillery Company Limited's case, are pertinent in this behalf. In the case before me, however, I find that in the written statement of the employer no specific plea was ever taken about there being no industrial dispute at all in existence between the parties within the meaning of section 2(k) of the Act. That is why even the issues framed by the Tribunal did not expressly cover that point. In fact, the frame of issue No. 2 shows that the employer had impliedly admitted the existence of an industrial dispute and all that the employer was questioning was the *locus standi* of the Samiti to raise the same.

25. So far as issue No. 3 is concerned, it appears to have become redundant in view of the specific statement of the Samiti giving up the claim in respect of the workmen employed by the contractor. The frame of the fourth issue shows that the whole reference could not possibly have been disposed of on determination of that issue.

26. In these circumstances I do not find any error of law apparent on the face of the order of the Tribunal declining to treat any of the issues as a preliminary one. Out of the first four issues, which had once been directed to be tried before entering on the merits of the controversy between the parties, the first issue related only to the alleged vegueness of the claims. The objection had been disposed of by the Tribunal by recording the supplementary statements of the parties and by directing the filing of a rejoinder. As to what was the effect of those orders and of filing or non-filing of the replication by the Samiti will have to be determined by the Tribunal itself.

27. As to the objection against the jurisdiction of the Tribunal to review its own earlier order directing the treating of issue Nos. 1 to 4 as preliminary, it appears to me that there is no bar in a Tribunal deciding from time to time according as the circumstances permit whether it would proceed to try all the issues or any group of them together or resort to piece-meal trial in the interest of justice. Dr. Anand Prakash referred to the following observations made in paragraph 116 (at page 59) of the Third Edition of 'Halsbury's Laws of England' (Volume 11) -

> "The jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent (such as notice) or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the inferior tribunal has to try, and the determination whether it exists or not is logically and temporally prior to the

determination of the actual question which the inferior tribunal has to try. The inferior tribunal must itself decide as to the collateral fact, when, at the inspection of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not."

28. The above quoted passage really relates to the desirability of trying certain issues relating to jurisdictional facts as preliminary. This is a matter with which I have already dealt. No law has been shown to me which bars jurisdiction of a Tribunal from changing its mind in this respect in changed circumstances from time to time as it may be advised. In fact, the argument of the learned counsel for the contesting respondent was that the first preliminary issue was deemed to have been decided against the petitioner. I am unable to go into this matter in these proceedings.

29. Apart from the cases, to which both sides referred in order to show the circumstances in which this Court normally interferes with the orders of an industrial Tribunal under Articles 226 of the Constitution, the only other point, which was argued by Dr. Anand Prakash, was that when he wanted to discharge allegedly wrongly placed onus of issue No. 2 by claiming inspection and discovery, the impugned orders of the Tribunal, already referred to, really amounted to placing fetters on the employer to discharge the burden of the issue. It is not disputed that the provisions of Order 11 of the Code of Civil Procedure relating to discovery and inspection have been expressly made applicable to proceedings before the Industrial Tribunal under section 11 of the Act. It is also true that no definite order allowing or refusing discovery appears to have been passed by the Tribunal on the application of the employer. There is no doubt that out of the documents mentioned in the application for discovery, three had been produced in the proceedings when they were brought before the Tribunal. Dr. Anand Prakash states that even those were not filed before the Tribunal but taken away by the representative of the Samiti. Be that as it may, it appears to me that the Tribunal should pass appropriate orders allowing or refusing discovery does not only relate to the specific documents mentioned in the application, but has to be made, if ordered by the Tribunal, by filing an appropriate affidavit under Order 12 rule 13 of the Code, in prescribed Form V in the appendix to the Code. So far as inspection is concerned, it is for the employer, if so advised, to serve an appropriate notice on the authorized representative of the Samiti to allow inspection and on the failure of the Samiti to do the needful, to take appropriate proceedings before the Tribunal in accordance with law.

30. Regarding the jurisdiction of this Court under Article 226 of the Constitution, Dr. Anand Prakash referred to *Mettur Chemical and Industrial Corporation Limited v. The Workers of Mettur Chemical and Industrial Corporation Limited*[9]*, Punjab National Bank Limited v. Ram Kanwar and another*[10]*,* and *Gaji Ramavtar v. Asarva Mills Company Limited*[11] and argued that in matters relating to jurisdiction this Court should interfere by a writ in the nature of *certiorari.* On the other hand, Mr. R.S. Mittal, learned counsel for the Samiti, relied on an unreported judgment of Bishan Narain, J. in the *Karnal Co-operative Transport Society Ltd. v. The State of Punjab*[12]*,* wherein this Court declined to interfere with an order of the Industrial Tribunal refusing to treat an issue as preliminary and further observed that it is a matter of discretion as to whether the preliminary issues should be decided first or along with the merits and it is primarily for the Tribunal to exercise this discretion and the Tribunal having exercised the discretion one way it was not for this Court to interfere with its order under Article 226 of the Constitution.

31. Mr. R.S. Mittal, lastly referred to the judgment of the Supreme Court in *N.T. Veluswami Thevar v. G. Raja Nainar and others*[13] , but that does not seem to be directly relevant for the purposes of deciding this petition, as the observations made therein related to election cases. No other argument was advanced before me in this case by either side.

32. For the foregoing reasons I allow this petition only to this extent that the Tribunal shall not adjudicate upon any matters contained in the demand notice of respondent No. 2, which are not covered by the reference made to it by the Government under section 10 of the Act and the Tribunal shall pass such orders as it deems fit in the circumstances of the case on the application of the petitioner for discovery. In respect of all other reliefs, the petition is dismissed; but nothing stated herein may, in any circumstances, be treated as expression of the views of this Court on any of the matters on which the Tribunal has to a adjudicate between the parties. In the circumstances of the case, there is no order as to costs.

Petition dismissed.

Cases Referred.

11961(2) LLJ 124
21949 LLJ 875
31965(1) LLJ 95
41965(1) LLJ 489
51960(1) LLJ 53
6AIR 1962 Pun 354
71965 PLR 816
81967 PLR 160
91955(1) LLJ 27
101957 (1) LLJ 542
111957(11) LLJ 87
12CW 1630 of 1960, decided on 20th Dec., 1960
13AIR 1959 SC 422