

(1959) 02 MAD CK 0005

Madras High Court

Case No: Writ Petition No's. 914 and 915 of 1958

The Employees in the Caltex
(India), Ltd., Madras and Another

APPELLANT

Vs

The Commissioner of Labour
and Conciliation Officer,
Government of Madras and
Another

RESPONDENT

Date of Decision: Feb. 24, 1959

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 12, 12(3)

Citation: AIR 1959 Mad 441 : (1959) ILR (Mad) 891 : (1959) 1 LLJ 520 : (1959) 72 LW 386

Hon'ble Judges: Balakrishna Ayyar, J

Bench: Single Bench

Advocate: S. Mohan Kumaramangalam, K.V. Sankaran and S. Ramaswami, for the Appellant; A.G.P., G.P. Pai, for King and Partridge, S. Govind Swaminathan and S.S. Sivaprakasa, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Balakrishna Ayyar, J.

Burmah-Shell, Caltex and Standard Vacuum are important distributors of mineral oil and mineral oil products in

India. Prior to April 1958, the employees of these concerns or rather, the bulk of them -- belonged to one or other of four unions, viz., the

Burmah-Shell Oil Company's Union, The Caltex Oil Company's Union, the Standard Vacuum Oil Companies Union and the Madras Kerosene

Oil Workers Union, Neither the Burmah-Shell Oil Company nor the Burmah-Shell Oil Company's Union figure in the present dispute. The Caltex

Oil Company and the Standard Vacuum, Oil Company have each two terminals or installations in the City of Madras. The Burmah-Shell Oil

Company has also its terminals. The Madras Kerosene Oil Workers' Union include in its membership the employees of all the three companies in

their terminals in Madras. But, in these proceedings we are not concerned with the employees in the terminals of installations of the Burmah-Shell

Oil Company in the City of Madras.

2. The Caltex Employees' Union had been recognised by the Caltex Oil Company subject to certain terms. One of these terms ran as follows :

The Union excludes from its membership the service and labour Staff of the company's Madras Terminals who are now represented by the

Madras Kerosene Oil Workers' Union.

In or about April 1958, the Caltex Employees' Union and the Standard Vacuum Oil Company's Union effected a merger and the amalgamated

union was called the Petroleum Workers' Union. Upto the end of December 1957 the conditions of employment in the Caltex Oil Company and

the Standard Vacuum Oil Company were governed by certain agreements. These agreements lapsed on the last day of December 1957. On 4-1-

1958 the Caltex Employees' Union wrote to the District Manager of Caltex (India) Ltd., enclosing a "charter of demands" and calling upon the

company to concede those demands,

On 30-6-1958 the Madras Kerosene Oil Workers' Union notified the management of the companies that they would go on strike at the end of 15

days. Thereupon the Commissioner of Labour, who is also the Conciliation Officer appointed under the Industrial Disputes Act of 1947, called for

a meeting between the representatives of the employers and employees. On 18-7-1958 the Commissioner of Labour wrote to Government

reporting what had happened at the meeting. His letter concluded as follows :

Both parties have agreed to meet me on 31-7-1958 for a further discussion of the matter. I shall send a further report to Government after

meeting the parties on that date.

Copies of this letter were sent to the three companies and to the Madras Kerosene Oil Workers' Union, the Burmah-Shell Employees' Union and

the Petroleum Workers' Union. Further discussions took place on 31-7-1958 and a report thereon was sent by the Conciliation Officer on 2-8-

1958 to Government. In that letter he explained briefly what had happened at the meeting and ended it as follows :

The managements declined to commit themselves to arbitration or to any interim payment of bonus. Mr. White wanted at least six weeks time to

work out the details and put forth concrete proposals in the matter. The Union representatives stated that they could not accept the four months'

bonus for 1957 as a final payment without knowing definitely the other proposals of the managements and that they could not also wait indefinitely

in the matter. In the absence of any concrete proposals from the managements, it has not been possible to bring about a settlement of the dispute.

3. According to the Petroleum Workers' Union, who are the petitioners before me this report of the Labour Commissioner and Conciliation

Officer is a final report within the meaning of Section 12(4) of the Industrial Disputes Act,

4. On 12-8-1958, the Additional Secretary to Government in the Department of Industries, Labour and Co-operation, wrote to the managements

and the unions stating that the Minister for Industries desired to discuss with them the question of bonus for the year 1957, and, requesting them to

meet the Minister in his chambers on the 14th. At the conclusion of the discussions held on the 14th, I now quote from the letter of the Additional

Secretary to Government in the Department of Industries, Labour and Co-operation dated 16-8-1958,

It was decided that the parties will conduct negotiations for a long term settlement in regard to wages, dearness allowance and other matters, that

the negotiations will commence early next week and that the negotiations will not exceed four weeks.

The letter ended:

I am to request you to take further action accordingly and inform the Government of the results in due course.

On 12-9-1958 the General Secretary of the Petroleum Workers' Union wrote to the District Manager of Caltex (India) Ltd., informing him that a meeting of the general body of the Union had been held that day and that at that meeting it had been resolved among other things to stop further negotiations with the managements. Copies of this letter were sent to among others, the Manager of the Standard Vacuum Oil Company, Madras, and to the Commissioner of Labour, Madras. On 17-9-1958, the Petroleum Workers' Union also wrote to the Minister for Labour, Government of Madras, reporting that negotiations had failed. That letter ended with the request that the Minister would move the Government of India to urgently set up a National Tribunal. Commencing from 14-10-1958 individual employees belonging to the petitioners' Union also sent letters protesting against negotiations.

Nevertheless negotiations continued between the managements and the Madras Kerosene Oil Workers' Union, and, on 16-10-1958, they reached a settlement, the terms of which appear in Exs. E and E-I annexed to W.P. No. 914 of 1958 and in Exs. 8 and 9 annexed to the counter filed on behalf of Caltex (India) Ltd. The agreement was signed by the representatives of the Kerosene Oil Workers' Union and the representatives of Standard Vacuum Oil Company (Exs. E and E-I) and the representatives of Caltex (India) Ltd. (Exs. 8 and 9). The Commissioner of Labour and Conciliation Officer, Government of Madras, has also put his signature below the memoranda of settlement. The settlement expressly purports to be u/s 12(3) of Industrial Disputes Act.

5. In pursuance of this settlement disbursements were made, and, in the counter affidavit filed on behalf of Caltex (India) Ltd., it is stated that,

98 per cent of the workmen have accepted benefits under the bonus settlements in full and final settlement as per copy of receipts Ex. 16 series.

In the affidavit filed on behalf of the Standard Vacuum Oil Company, it is stated,

As a result of these settlement (sic) 130 workers out of a total number of 197 covered by the settlement have accepted bonus agreed upon by them.

On 8-11-1958, the Petroleum Workers' Union wrote to the managements of Caltex (India) Ltd., and Standard Vacuum Oil Company Ltd.,

protesting against the implementation of the settlement dated 16-10-1958. That Union, which was not a party to this settlement and which had on

17-8-1958 represented to the Minister for Labour that negotiations had failed, has filed these two petitions--one against Caltex (India) Ltd., and

the other against the Standard Vacuum Oil Company -- praying in each for the issue of an appropriate writ to call for the records connected with

the settlement reached u/s 12(3) of the Industrial Disputes Act before the Conciliation Officer, Government of Madras, dated 16-10-1958 and, to

quash the same.

6. The arguments of Mr. Mohan Kumaramangalam the learned advocate for the petitioners may be thus summarised. Section 18 of the Industrial

Disputes Act deals with two kinds of settlements. (1) settlements arrived at by agreement between the employer and the workmen in the course of

conciliation proceedings, and (2) settlements arrived at between the employer and the workmen otherwise than in the course of proceedings. To

settlements falling into the latter category the ordinary rule of law relating to contracts would apply and they would bind the parties thereto, their

privies and their principals. But settlements arrived at between employers and workmen in the course of conciliation proceedings bind others also.

Sub-section (3) of Section 18 makes it plain that had a settlement would bind not merely the parties to the industrial dispute, but, where a party to

the dispute is composed of workmen it would bind

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.

Now because the settlement reached between Caltex (India) Ltd., and the Standard Vacuum Oil Company and the Kerosene Oil Workers' Union

on 16-10-1958 is called a settlement u/s 12(3) of the Act, that is to say, a settlement arrived at in the course of conciliation proceedings and

further, because that settlement is also signed by the Conciliation Officer, it could be said that the terms of that settlement are binding on the

members of the petitioner Union even though that Union was not a party to the settlement and had lodged its protest. It would not be right at all to

call the settlement reached on 16-10-1958 a settlement reached in the course of conciliation proceedings.

In the first place Sub-section (6) of Section 12 requires that a report under that section shall be submitted within 14 days of the commencement of

the conciliation proceedings. The conciliation proceedings in the present case started on 14-7-1958, when the Conciliation Officer sent out letters

calling for a meeting. The fourteen days referred to in Sub-section (6) ended long before 16-10-1958. There is no doubt a proviso to Sub-section

(6) which says that the time for the submission of the report referred to in the subsection may be extended. But then, that extension can be only by

agreement in writing by all the parties to the dispute. There has been no agreement extending time in the present case.

7. No doubt Sub-section (2) of Section 9 enacts that no settlement arrived at in the course of a conciliation proceeding shall be invalid by reason

only of the fact that such settlement was arrived at after the expiry of the period referred to in Sub-section (6) of Section 12. But then in order that

the benefit of this provision may be available, the conciliation proceedings must have continued and must not have collapsed. But, in the present

case; they did not continue; on the other hand, the report which the Conciliation Officer sent On 2-8-1958 definitely shows that conciliation

proceedings had failed.

It is not possible to read it as an intermediate report as suggested during the arguments because the Conciliation Officer did not say in it that he was

still pursuing the matter and would submit a further report. In effect and substance that letter is a report within the meaning of Section 12(4) and it

marks the termination of the conciliation proceedings. The settlement come to on 16-10-1958 must therefore be regarded as a settlement come to

otherwise than in the course of conciliation proceedings.

8. It is no doubt true that after the Conciliation Officer had sent his report the Minister for Labour took up the matter and tried to effect a

settlement. He was of course entitled to do that; But, then the Minister is not a Conciliation Officer and any settlement come to as a result of his

good offices would not be a settlement arrived at in the course of conciliation proceedings. There being no rule corresponding to the rule or res

judicata which applies to civil actions the Conciliation Officer could even after the failure of his first attempt start conciliation proceedings afresh.

He could do that either suo motu or at the instance of the Minister, or, in fact of any one else. But the Conciliation Officer did no such thing in the present case.

He did not call for any fresh meeting between the employees and the employers.

The letter which the Additional Secretary to Government in the Department of Industries, Labour and Co-operation wrote to the Secretary of the

petitioner Union can in no sense be regarded initiating conciliation proceedings within the meaning of Section 12. Proceedings under that section, as

stated before, can be conducted only by the Conciliation Officer and not by the Minister or the Government. And, finally, there is the hard fact that

the Petroleum Workers' Union was not a party to the settlement and had repudiated it as soon as it became aware of it.

9. There is considerable force in this line of reasoning. Learned counsel for the companies invited me to treat the report which the Conciliation

Officer sent on 2-8-1958 to the Government as an intermediate report; but I doubt whether I shall be justified in doing that because there is this

explicit statement at the end of it,

it has not been possible to bring about a settlement of the dispute".

The reasons and circumstances he set out in that letter do not alter the fact that he had reported failure. After this failure there had been no

resumption of conciliation proceedings by the Conciliation Officer, and a settlement brought about owing to the intervention of other persons

cannot be treated as a settlement arrived at in the course of conciliation proceedings within the meaning of the statute. The settlement in question

cannot be regarded as a settlement u/s 12(3) of the Act.

10. This, however, is not sufficient to dispose of the matter. A writ or certiorari can issue only in relation to a judicial or quasi-judicial act and I am

unable to persuade myself that when Acting u/s 12 of the Industrial Disputes Act a Conciliation Officer is acting in a judicial or quasi-judicial

manner. No doubt there are opposing parties and various points at issue between them. But, the Conciliation Officer is not competent to hear or

decide any of them. All he can do is to try to persuade the parties to come to a fair and amicable settlement. The Act gives him power to

do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

His duties are to induce or persuade; he has no power to decide anything at all. He can appeal to their good sense or to their sense of patriotism or

to their self-interest. Within reasonable limits he may also remonstrate with them. He may invite them to take into consideration the temper of public

opinion or the hardships that the public may be put to. In fact, the matter is left entirely to his resourcefulness and powers of persuasiveness. How

the discharge of such duties can be regarded as judicial or quasi-judicial, it is hard to see.

11. Mr. Mohan Kumaramangalam referred me to the decision in *R v. Manchester Legal Aid Committee*, 1952 1 All ER 480. On pp. 486 to 490

of the report Parker J. has examined the scope of a writ of certiorari and indicated how with the passage of time the ambit of the activities in

relation to which the writ was being issued has been extended and how in *R v. Postmaster General ex p. Carmichael*, 1928 1 KB 291, the

certificate of the chief medical officer of the Post Office certifying that one Carmichael, a clerk, was not suffering from telegraphist's cramp was

quashed. If a writ could issue in a matter of that kind, said Mr. Kumaramangalam, a writ of certiorari can issue in the present case also. I do not

however think that the present case can be approximated to that of 1928 1KB 291, because apart from everything else, as explained before, the

duties of a Conciliation Officer u/s 12 are not to decide, but to persuade, or, in the language of the section, to induce the parties to come to a

settlement.

12. It is also difficult to see how the circumstance that the Conciliation Officer has signed at the foot of the agreement, and the agreement purports

to be one u/s 12(3) of the Industrial Disputes Act can be regarded as any kind of order or decision. It is not therefore susceptible to correction by

certiorari.

13. Mr. Mohan Kumaramangalam complained that by reason of the fact that the conciliation officer has appended his signature to the foot of the

memorandum of settlement which purports to be u/s 12(3) of the Act the rights of the petitioner are prejudicially affected and that it would be

claimed that the petitioner and the workmen whom the petitioner represents are bound by the terms of the settlement. Even so, how it becomes an

order or decision I find it hard to see.

14. It will be appreciated that whatever may be the position of the petitioner in relation to the settlement, it does bind the employers and all the

employees whom the Madras Kerosene Oil Workers" Union represented or whom it was entitled to represent. As between them the agreement is

good and valid and cannot be quashed. When the matter is fully considered it will be appreciated that what the petitioner really wants is a

declaration that the settlement come to on 16-10-1958 does not bind the petitioner. To get such a relief it must file a suit for a declaration. The

jurisdiction of this Court in relation to writs cannot be availed of for that purpose.

15. There are still further difficulties in the way of the petitioner. Some employees working in the terminals of these companies appear to belong to

both the Madras Kerosene Oil Workers" Union and the Petroleum Workers" Union. By virtue of being members of the Madras Kerosene Oil

Workers" Union they will be bound by the settlement arrived at. How can they be relieved from that obligation because they happen to belong to

the Petroleum Workers" Union? If it be suggested that the relief may be so limited as to make it available only to such members of the Petroleum

Workers" Union as are not also members of the Madras Kerosene Oil Workers Union the difficulty arises that a question of fact has to be

investigated which cannot be done in writ proceedings.

In this connection it is necessary to bear in mind that the Petroleum Workers" Union was formed by the merger of two other unions one of which

was called the Caltex Employees" Union, and, that this Union had been recognised by the company subject to the distinct understanding that the

Union would exclude from its membership the service and labour staff of the company"s Madras terminals who were represented by the Madras

Kerosene Oil Workers" Union. An association which has been formed by the merger of other associations cannot get rid of the obligations

fastening to the Unions which merged into it. An individual or association which has given an undertaking cannot shed the burden of that undertaking by merging itself into something else.

16. There is yet a further difficulty. The affidavit filed on behalf of the Caltex (India) Ltd., shows that 98 per cent of the workmen have adopted the settlement reached on 16-10-1958, and likewise, the affidavit filed on behalf of the Standard Vacuum Oil Company shows that 130 workmen out of a total of 197 have adopted the settlement. Mr. Mohan Kumaramangalam explained that the work men must have been induced somehow or other to accept the settlement. But, here I cannot investigate the question whether the workmen concerned were induced to accept the settlement by unfair or illegal methods. I can proceed only on the footing that they have accepted them. This will be another circumstance which, even if the writ were otherwise available to the petitioner, would justify the Court in refusing it.

17. Taking all the circumstances into account I must refuse the writs prayed for. The petitions are dismissed, but, in the circumstances of the case, without costs.