

Standard Vacuum Oil Co. Vs Industrial Tribunal and Others

Court: High Court Of Kerala

Date of Decision: Feb. 27, 1952

Acts Referred: Constitution of India, 1950 " Article 226
Industrial Disputes Act, 1947 " Section 10, 18

Citation: (1952) 1 LLJ 612

Hon'ble Judges: Subramanya Iyer, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Subramanya Iyer, J.

This is an application for a writ of certiorari to bring up and quash the proceedings in adjudication No. 11 of 1950 on

the file of the first respondent, the industrial tribunal, Ernakulam, and for incidental orders or directions under Article 226(1) of the Constitution of

India.

2. The facts are these. The applicant Company are the stockists and distributors of petrol in Ernakulam. In July 1948 a quantity of petrol from their

stock was taken out in a lorry belonging to but without the knowledge of the company. A prosecution for theft at the instance of the police ensued.

The third respondent was charged with having driven the lorry, and respondents 2 and 4 were charged with having taken the quantity of petrol

from out of the company's stock. Respondents 2, 3 and 4 were employees under the company. There were some other accused in the case who

were also the company's employees. All the accused were placed under suspension pending the trial. The prosecution ended in the acquittal of all

the accused. The company took the other accused back into service, but having regard to the facts disclosed at the enquiry conducted by them as

also to the confessions made by respondents 2 and 3, the company were satisfied about their participation in the matter and refused to take back

respondents 2, 3 and 4 and discharged them.

3. On a complaint made by these respondents that their discharge was unjustified the Government of the State of Travancore-Cochin (5th

respondent) made the following order:

Whereas an industrial dispute has arisen between the Standard Vacuum Oil Company, Ernakulam, represented by their terminal superintendent,

Ernakulam, and their workmen, viz., Sri C.P. Sukumara Menon, Povothil House, Thrikkanarvattom, Ernakulam, Sri Thekkeveetil Ouseph Xavier,

Mariyattuparambu, Pachalam, Ernakulam, and Sri Mecheri Thommen Devassey, Choolakal Parambu, Thrikkanarvattom, Ernakulam, in respect of

matters mentioned in the annexure to this order:

And whereas in the opinion of the Government, it is necessary to refer the said industrial dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Section 10(1)(c) of the Industrial Disputes Act 1947 (Central Act XIV of 1947)

Government hereby direct that the said industrial dispute for adjudication to the industrial tribunal, Ernakulam, having its place of sitting at

Ernakulam.

Annexure.

Whether the discharge of Sri C.P. Sukumara Menon, Sri T.O. Xavier and Sri M.T. Devassey justifiable? If not, to what relief are they entitled?

The first respondent accordingly started the aforesaid proceedings No. 11 of 1050.

4. The contentions urged on behalf of the applicant are (1) that there was no industrial dispute within the meaning of the Industrial Disputes Act

XIV of 1947 and that the dispute is purely individual; and (2) that even such dispute was not between the company and their workmen because by

the time the dispute arose respondents 2, 3 and 4 had ceased to be workmen under the company. It is argued that in the absence of any one of

these, the reference would be ultra vires the Government and that proceedings started by the tribunal pursuant thereto would be unauthorized and

illegal.

5. The respondents replied by saying that though the dispute was individual at the inception, it changed its character because the cause was taken

up by the Mineral Oil Workers' Union at whose instance the Labour Department of the State intervened, secured reinstatement of the rest and the

reference for adjudication was the result of the refusal of the company to reinstate these three. It is therefore contended that there is an industrial

dispute, justifying the reference. Respondents 2, 3 and 4 are claimed to be workmen as their discharge was after the dispute arose. Respondents

raise a further point that the applicant has submitted to the jurisdiction of the tribunal by having appeared before it and that therefore this application

cannot be maintained.

6. The first question to be considered is whether there was an industrial dispute because in its absence the authority of Government to refer for

adjudication will not arise and cannot be exercised.

7. Section 10 of the Industrial Disputes Act provides:

10 (1) If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing,-

(a) * * *

(b) * * *

(c) refer the dispute to a tribunal for adjudication:

* * *

and industrial dispute has been defined in the Act thus:

2. (k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between

workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour,

of any person.

The contention urged on behalf of the respondents is that in view of the provisions of the General Clauses Act, the definition would comprise a

dispute between the employer and one or a few only of the workmen. The language of the definition is certainly susceptible of the wide

interpretation suggested. The definition has however to be understood and interpreted with reference to the context. Regard being had to the

scheme of the Act in the light of the indications afforded by the provisions contained in Section 18 it is clear that the wide interpretation contended

for cannot be justified and that the true meaning of an industrial dispute is that it should be a collective dispute. A dispute pertaining to an individual

workmen may if taken up by all the others or a sufficient number for them or by a labour union become collective and therefore an industrial

dispute. But a dispute which at the inception is an individual one and continues to be such cannot be regarded as an industrial dispute within the

meaning of the Act justifying a reference for adjudication to a tribunal. In this case the contention urged on behalf of the respondents is that the

dispute had not developed and become a collective dispute. Reliance is placed upon the interference of the Mineral Oil Factory Workers' Union.

That such interference had not the effect of creating any change in the character of the dispute and did not operate to make it a collective one is

clear from the order of Government read above. The order says:

Whereas an industrial dispute has arisen between the Standard Vacuum Oil Company, Ernakulam, represented by their terminal superintendent,

Ernakulam, and their workmen, viz., Sri C.P. Sukumara Menon, Poovathil House, Sri Thekkeveettil Ouseph Xaxier...and Sri Mecheri Thommen

Devassey....

making it clear that the dispute at the time of the order was one between the employer company and the three specified individuals who were

discharged workmen. Had the alleged interference of the union any effect upon the nature of the dispute and had it operated to convert what was

individual into a collective dispute then the order would have referred to the dispute in its changed aspect as a collective dispute and would not

have mentioned it as even then being one individually appertaining to the three named workmen and who alone were parties concerned therewith.

In the face of the order of Government which is clear upon this matter a contention that the dispute in question was one other than of the nature

adumbrated therein Cannot be raised or countenanced. The question whether an individual dispute will come within the meaning of the definition of

" industrial dispute" in the Act has been considered by the Madras High Court in two cases. The Kandan Textile Ltd. v. The Industrial Tribunal I

Madras 1949 I L.L.J. 875 and Manager, United Commercial Bank Ltd. Vs. Commr. of Labour and Another, wherein the learned Chief Justice

and two Judges of the Madras High Court have discussed the matter in great detail and reached the conclusion that a proper interpretation of the

definition would exclude an individual dispute from the ambit of an industrial dispute in the Act. This view has been followed by the Calcutta High

Court in the matter of J. Choudhary v. M.C. Bannerjee 55 C.W.N. 256. In the face of the learned discussions of the question in the aforesaid

cases it is unnecessary to embark upon any elaboration here and I consider it sufficient to record my respectful agreement with the view taken

therein.

8. It follows that the order passed by Government referring the dispute indicated in the annexure to the order read above is devoid of foundation

there having been no industrial dispute whose existence is essential, I hold that the order of reference is ultra vires the Government and the

proceedings started by the first respondent (tribunal) on the foot of that reference are also ultra vires. A writ of certiorari should therefore go and

the order of reference as also the proceedings started by the first respondent on the foot of that reference should be quashed as having been

passed and started without jurisdiction. The first respondent is directed to forbear from proceeding further upon that reference. As the application

succeeds upon the first of the points taken it is unnecessary to consider the other point urged on that behalf.

9. The want of jurisdiction of the first respondent tribunal is inherent and in such a case, jurisdiction cannot be conferred by consent. The

appearance by the applicant before the tribunal has not the, effect of preventing them from challenging the proceedings which are ultra vires.

10. The respondents will pay the costs of the applicant with advocate"s fee Rs. 100/.