Employees of Asbestos Cement Ltd., Kymore Vs Industrial Court, Madhya Pradesh, Indore and Others

Court: Madhya Pradesh High Court

Date of Decision: Oct. 11, 1968

Acts Referred: Madhya Pradesh Industrial Relations Act, 1960 â€" Section 2(17), 31, 51, 82

Citation: AIR 1969 MP 248 : (1973) ILR (MP) 31 : (1969) JLJ 759 : (1969) 14 MPLJ 56 : (1969) MPLJ 56

Hon'ble Judges: P.V. Dixit, C.J; G.P. Singh, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari and Gulab Gupta, for the Appellant; R.S. Dabir and M.R. Pathak, for the Respondent

Final Decision: Allowed

Judgement

Singh, J.

This is a petition under Articles 226 and 227 of the Constitution for issuance of writs of certiorari and mandamus by the Employees of the

Asbestos Cement Limited, Kymore through their representative Union and is directed against an order of the Industrial Court, Indore by which a

reference made to it by the State Government was rejected as incompetent.

The facts and circumstances leading up to this petition are as under:

The Asbestos Cement Limited, Kymore, hereinafter referred as the Company, put up and issued a notice on 11th March, 1968 declaring its

intention to close one pipe machine and one sheeting machine from 20th May, 1968 as also to close the third shift in the loading department from

20th June, 1968. This led to the reference of an industrial dispute. The State Government by its order of reference made on 22nd April, 1968

referred the dispute upon the matters specified in the schedule annexed thereto to the arbitration of the Industrial Court u/s 51(a) of the Madhya

Pradesh Industrial Relations Act, 1960.

The schedule which specified the dispute ran as follows:

1. Whether the proposed closure of one sheeting machine and one pipe machine from 20-5-1968 and discontinuance of one shift in Loading

Department from 20-6-68 by the Management of Asbestos Cement Ltd. Kymore, is legal and justified.

Whether an interim order should be issued restraining the management from closing down the above departments shift until the dispute about the

propriety and legality of the closure is adjudicated upon.

The Industrial Court by its order passed on 20th May, 1968 rejected the reference holding it to be incompetent. The employees, therefore have

filed this petition in which they pray that the said order be quashed and the Industrial Court be directed to decide the reference according to law.

The first ground on which the reference was held to be incompetent is that on the company issuing the notice giving out its decision to discontinue

the two machines and close the third shift in the loading department, the Representative Union of the Employees made no demand nor expressed

any desire to the company to withdraw the proposed change in accordance with Section 31 (2) and in the absence of such a notice u/s 31 (2) no

industrial dispute could be said to have arisen and, therefore, no reference could be made to the Industrial Court u/s 51 of the Act. This reasoning

presupposes that a notice of change u/s 31 is a prerequisite for giving rise to an Industrial Dispute. But there is no basis whatsoever for such an

assumption.

The expression ""Industrial Dispute"" is defined by Section 2 (17) of the Act which reads as follows:

Section 2 (17). ""Industrial dispute"" 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.

A bare reading of this definition goes to show that Industrial Dispute is not restricted to disputes arising out of a notice of change issued by

Employer or Employees u/s 31. The generality of the definition which embraces any dispute or difference connected with any industrial matter

cannot be cut down by any such assumption as was made by the Industrial Court. Moreover, the power of the State Government to make a

reference u/s 51 is not controlled by anything contained in Section 31. Section 51 opens with a non obstante clause ""Notwithstanding any-thing

contained in this Act""-- which makes it plain that a notice of change u/s 31 is not a condition precedent for enabling the State Government to make

a reference u/s 51.

Indeed this question can be taken to bo covered by the decision of the Supreme Court in Ahmedabad Mill Owners" Association Etc. Vs. The

Textile Labour Association, . In that case their Lordships considered this question in the context of the Bombay Industrial Relations Act, 1946

which contains similar provisions. Sections 2 (17), 31 and 51 of the Madhya Pradesh Act correspond respectively to Sections 8 (17), 42 and 73

of the Bombay Act Construing these sections of the Bombay Act, their Lordships observed:

On a fair reading of Section 73, it is plain that it deals with the powers of the State Government to make a reference and as such, it is difficult to

assume that the said powers of the State Government are intended to be controlled by the provisions of Section 42. Section 42 prescribes the

procedure which has to be followed by the employer and the employee respectively if either of them wants a change to be effected as

contemplated by it. The scheme of Section 42 read along with the other provisions in Ch. VIII clearly shows that the said Chapter can have no

application to cases where the State Government itself wants to make a reference. That is the first consideration which militates against the

construction which Mr. Setalvad suggests.

The opening clause in Section 73 also unambiguously indicates that the power of the State Government to make a reference will not be controlled

by any other provision contained in the Act. This clause plainly repels the argument that the provisions of Section 42 should be read as controlling

the provisions of Section 73. The meaning of the non obstante clause is clear and it would be idle to urge that the requirements of Section 42 must

be satisfied before the power u/s 73 can be invoked by the State Government.

It is, however, urged that the power conferred on the State Government by Section 73 is the power to refer an industrial dispute to the arbitration

of the Industrial Court, and there can be no industrial dispute unless a notice of change has been given either by the employer or the employee. In

other words, the argument is that unless a notice of change is given as required by Section 42, no industrial dispute can be said to arise between

the employer and his employee, and that is how Section 42 governs Section 73. If it was the true legal position that there can be no industrial

dispute between an employer and his employee unless a notice of a change is given by either of them, there would have been some force in this

contention; but the definition of the words ""industrial dispute"" does not justify the assumption that it is only a notice of change that brings into

existence an industrial dispute. Section 3 (17) of the Act defines an ""industrial dispute"" as meaning 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. This

definition is so wide and comprehensive that it would be impossible to accept the argument that it introduces the limitation suggested by Mr.

Setalvad.

The observations quoted above apply with full force for construing Sections 2 (17), 31 and 51 of the Madhya Pradesh Act and it must be held that

the Industrial Court went wrong in holding that no industrial dispute could arise and none could be referred u/s 51 in the absence of a notice of

change contemplated by Section 81.

In support of its conclusion the Industrial Court placed reliance on the ruling of the Supreme Court in The Sindhu Resettlement Corporation Ltd.

Vs. The Industrial Tribunal of Gujarat and Others, and quoted the following observations:

If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by

them and not an industrial dispute between them and their employer. An industrial dispute, as defined must be a dispute between employers and

employers, employers and workmen, and workmen and workmen. A mere demand to a Government without a dispute being raised by the

workmen with their employer, cannot become an industrial dispute.

All that these observations mean is that simply by making a request to the Government the employees cannot be said to have raised a dispute with

the management and that raising of a dispute with the management is necessary for giving rise to an industrial dispute. But these observations do not

in any way support the conclusion that a dispute with the management which can be subject matter of reference as an industrial dispute can only

arise by giving a notice of change. In that case certain retrenched employees and their representative union had demanded from the management

only retrenchment compensation and had not claimed reinstatement and therefore, it was held that it was not open for the State Government to

make a reference in respect of reinstatement and the reference could have been made only in respect of the retrenchment compensation which was

the only subject matter of dispute between the employees and the management.

As regards the instant case, the Industrial Court merely found that the employees did not give any notice of change u/s 31 (2) of the Act to the

company and the finding is not this that no demand was made by the employees to the company not to close the two machines and the third shift in

the loading department, In the absence of a finding to that effect it could not have held that there was no industrial dispute, which the State

Government could refer u/s 51. The order of reference in the instant case recited the satisfaction of the State Government about the existence of

the industrial dispute between the company and its employees. In view of this recital the regularity of the order including the fulfilment of the

conditions precedent had to be presumed: see Swadeshi Cotton Mills v. 5. IT Tribunal AIR 1861 SC 1381. If the company wanted to contend

that no industrial dispute in fact existed, it was for the company to produce the relevant material to rebut the presumption of existence of dispute.

Be that as it may, the The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, relied upon by the Industrial

Court does not support the reasoning that in the absence of a notice of change u/s 31 no industrial dispute could arise for reference u/s 51.

4, The second ground on which the reference was rejected is that an industrial dispute in respect of a proposed closure is outside the purview of

Section 51, as it falls within Section 82 and, therefore, the reference made by the Government u/s 51 was not entertainable. To appreciate this

reasoning it is necessary to read Sections 51 and 82 -

Section 51. Reference of disputes to Labour Court, Industrial Court or Board.-

Notwithstanding anything contained in this Act, the Government may, if on a report made by the Labour officer or otherwise it is satisfied that an

industrial dispute exists, and-

(a) it is not likely to be settled by other means; or

(b) by reason of the continuance of the dispute-

(i) a serious outbreak of disorder or breach of the public peace is likely to occur; or

(ii) serious or prolonged hardship to a large section of the community is likely to bo caused; or

(iii) the industry concerned is likely to be seriously affected or the prospects and scope of employment therein curtailed; or

(c) it is necessary in the public interest to do so; refer the dispute or any matter appearing to be connected with or relevant to the dispute for

arbitration to a Labour Court or the Industrial Court or a Board;

Provided that-

(i) no reference under this section shall be made to a Board without referring the matter to the parties and obtaining consent in writing of one of the

parties to the dispute; and

(ii) no reference shall be made to a Labour Court under this Section if the matter in dispute is included in Schedule I or if the dispute is between

employees and employees.

....

....

S. 82. Reference to Industrial Court for declaration whether strike, lock-out, closure or stoppage is illegal.--

(1) The State Government may make a reference to a Labour Court or the Industrial Court for a declaration whether any proposed strike, look-

out, closure or stoppage will be illegal.

(2) No declaration shall be made under this section save in open Court.

(3) The declaration made under Sub-section (1) shall be recognised as binding and shall be followed in all proceedings under this Act.

The language used in Section 51 is very wide in scope and authorises the Government to refer any industrial dispute for arbitration provided other

conditions of the section are satisfied. The section does not enact that an industrial dispute arising out of a proposed strike, lock-out, closure or

stoppage cannot be referred under the section and it is difficult to read any such implied exception. If a proposed strike, lockout, closure or

stoppage leads to an industrial dispute, the same can be referred for arbitration if other conditions mentioned in the section exist. This inference

which follows from the plain meaning of the words used is strongly reinforced by the non obstante clause --- ""Notwithstanding anything contained

in this Act"" -- with which the section opens. After a reference is made u/s 51 the authority concerned will have power to decide the dispute and to

grant appropriate relief to the parties within the scope of the reference by its award u/s 56.

We may now turn to Section 82 to see if there is anything in that section which can be read as a limitation on the power of the State Government to

refer for arbitration u/s 51 an industrial dispute arising out of a proposed strike, lock-out, closure or stoppage. Section 82 does not speak of any

industrial dispute. It only authorises the Government to make a reference to a Labour Court or the Industrial Court, for a declaration whether any

proposed strike, lock-out, closure or stoppage will be illegal. The existence of an industrial dispute is not a condition precedent for a reference

under this section. There is nothing in its wording which may prevent the making of reference u/s 51 if the proposed strike, lock-out, closure or

stoppage gives rise to an industrial dispute. Moreover, the relief available in a reference to the Industrial Court, u/s 82 is only that of a declaration

whereas Section 51 is not so limited. Having considered the language of Sections 51 and 82 we are of opinion that Section 51 is not controlled by

anything contained in Section 82 and that an industrial dispute arising out of a proposed strike, lock-out, closure or stoppage can be referred for

arbitration u/s 51 if other conditions of that section are fulfilled.

It will thus be seen that the two grounds given by the Industrial Court in support of its order cannot be sustained. But that is not the end of the

matter, for it was contended on behalf of the company before us that a proposed closure cannot give rise to an industrial dispute. Reliance for this

contention was placed on the decision of the Supreme Court in Indian Hume Pipe Co. Ltd. Vs. Their Workmen, . In that case it has been

observed:

Once the Tribunal finds that an employer has closed its factory as a matter of fact it is not concerned to go into the question as to the motive which

guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure

was not justified. Such a closure cannot give rise to an industrial dispute.

The Indian Hume Pipe Company''s case related to closure of a factory i. e. closure of the entire business carried on in the factory. In the instant

case the closure is not of that type. Here the company merely proposed to close two of its machines ana one shift in the loading department; the

proposal was not to close the factory at Kymore or the business carried on at that place and therefore the principle laid down in the Indian Hume

Pipe Co. Ltd. Vs. Their Workmen, can have no application.

The petition is allowed. The order of the Industrial Court dated 20th May, 1968 rejecting the reference is quashed and that Court is directed to

decide the reference according to law. By the same order the Industrial Court refused to grant to the employees the relief for interim injunction and

we make it clear that this part of the order has not been challenged before us and will, therefore, stand. The petitioners will have their costs of this

petition from the respondent No. 2. Counsel''s fee Rs. 200, The security amount will be refunded to the petitioner,