(1955) 06 BOM CK 0006

Bombay High Court

Case No: None

Krishnan (K.P.) and Others		APPELLANT
	Vs	
State of Bombay and Another		RESPONDENT

Date of Decision: June 23, 1955

Acts Referred:

- Industrial Disputes Act, 1947 - Section 12(5)

Citation: (1955) 2 LLJ 208

Hon'ble Judges: Tendolkar, J

Bench: Single Bench

Judgement

Tendolkar, J.
This is a petition by the employees of Firestone Tyre and Rubber Company of India, Ltd. for the issue of a writ of mandamus calling upon the State of Bombay, who are the first respondent, to refer a certain dispute to adjudication. The second respondents are the company.

2. The matter arises in this way. The petitioners are some of the employees of the company and are members of the employees'' union, a trade union registered under the Indian Trade Union Act. On 17 November 1953 the union sent a letter to the company putting forward certain demands relating to gratuity, paid holidays, classification of certain employees and bonus for the year November 1952 to October 1953. A copy of the said letter was also sent to the Commissioner of Labour with a request that he should intervene in the matter. The company did not send any reply to the said letter and thereupon the union wrote to the Assistant Commissioner of Labour to commence conciliation proceedings in the matter of the said industrial disputes. After this letter was sent on 2 December 1953 the company on 6 December 1953 declared a bonus for the year November 1952 to October 1953 equivalent to one-fourth of the basic earnings. The union did not accept this bonus as adequate and on 12 December 1953 the union addressed a letter to the company making an amendment in the original demand for bonus. Conciliation proceedings

were started on 29 April 1953 relating to bonus for the year 1952-53 and the classification of certain employees; but these proceedings were in fructuous and the conciliation officer on 5 July 1954 made his report to the Government u/s 12(4) of the Industrial Disputes Act, 1947. This report shall be referred to as the "failure report." Upon receipt of the report it was the duty of the Government u/s 12(5)to consider whether a reference should be made, and in this connexion the petitioners say that their representatives saw the Hon''ble Labour Minister at Bombay and requested him to refer the said dispute to the industrial tribunal for adjudication, but the said Hon''ble Minister reprimanded the employees'' representatives for the employees having adopted go-slow tactics during the year 1952-53 for which the bonus was asked for.... Ultimately by the letter of the Under Secretary of the Government of Bombay, Development Department, dated 11 December 1954, the general secretary of the union was informed that the Government did not propose to refer the said dispute to a tribunal u/s 12(5) of the Industrial Disputes Act, 1947. The reason assigned in the said letter for not referring the said dispute to a tribunal is "that the workmen resorted to go-slow during the year 1952-53." It is the case of the petitioners that in refusing to refer the said dispute to a tribunal the Government has relied upon a matter which is entirely extraneous to the question of making or not making a reference, and in doing so the Government has failed to apply its mind to the question of whether a reference should or should not be made as they were bound to do u/s 12, Sub-section (5).

3. The short question, therefore, that arises for determination is whether the order of the Government refusing to make a reference can successfully be challenged in these proceedings, and whether the Government ought to be required by a mandamus to make a reference.

4. Now, it is a matter of common knowledge that the object of the Industrial Disputes Act, 1947, is the maintenance of industrial peace. Chapter III of the Act relates to reference of disputes between employer and employees to boards, courts or tribunals, while Chap. IV, which is headed "Procedure, Powers and Duties of Authorities" inter alia deals with "conciliation proceedings." Section 12 which appears in this chapter has the marginal note " Duties of conciliation officers." The section provides that the said officer shall, for the purpose of bringing about a settlement of the dispute, investigate the dispute and all matters affecting the merits in order to induce the parties to come to a fair and amicable settlement of the dispute. But if his efforts fall, then under Sub-section (4) he has to make to the Government.

a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

Then Sub-section (5), which is the relevant subsection that I will have to construe, provides as follows:--

If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a board or tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate '' to the parties concerned its reasons there for.

5. Now, it is true that in the first part of this section the word "may" has been used, and the word "may" usually imports a discretion although it may sometimes be used in statutes as the equivalent of the word "shall." Since the first part of the first sentence provides that the appropriate Government has to be satisfied that there is a case for reference, it appears to me that if it is so satisfied it could not be intended that it would still be open to it not to make a reference, because it would be futile to say that the appropriate Government was satisfied that there was a case for reference if in fact no reference was to be made. I would therefore be inclined to consider further, having regard to the second sentence of this sub clause whether the "may" in this sub-section ought not to be construed as "shall." The second sentence provides that the Government is bound to record its reasons if it does not make a reference, and it seems to me to follow there from that the Government cannot refuse to refer for a reason. If it has a reason, it cannot be said to be satisfied that there is a case for reference, and therefore it seems to me that where there is no reason, and it is satisfied that there is a case for reference to a board or a tribunal, the Government is bound to make a reference and the word "may" in this sub-clause ought to to be read as "shall."

6. But that does not really solve the question that I have to determine. Government has assigned a reason for not making a reference and the contention before me both by Mr. Joshi on behalf of the State of Bombay and still more vehemently by Mr. Vimadalal on behalf of the company is that whatever reason Government chooses to assign, the Court cannot inquire into that reason and cannot say that Government should not have acted on such a reason or that Government in acting on such a reason was really not applying its mind to the question of making a reference at all.

7. Now, in the first instance it is quite plain that the authority that is to be satisfied u/s 5 is the Government, and no doubt where the Government gives a reason the adequacy or the validity of that reason shall not be inquired into by any court of law, provided the reason is germane to the question of making or not making a reference. But does it necessarily follow that if the reason is wholly extraneous to the question of making or not making the reference, the Court is precluded from considering whether it is extraneous, and if so, from holding that the Government had not applied its mind to the matter when they were satisfied that no reference should be made? Now, to take only one or two extreme illustrations, assuming for a moment that Government assigned as a reason for not making a reference at the

instance of the members of a trade union that they did not like the face of the secretary or the president of the union, could it be said that the Court must not interfere with such an order? Or, again, assuming for a moment that in the case of an application by an employer for a reference, the Government, whilst declining to make a reference u/s 12(5), stated as its reason that with the proximity of the elections they did not wish to alienate the sympathies of the employees, would the Court be precluded from considering whether these reasons were germane to the question of making or not making the reference or wholly extraneous to it? I have not the least doubt in my mind that if any such reasons were given, they would be wholly extraneous to the question of making or not making the reference and that an order made on any such ground would be an order made by Government without applying its mind to the case at all and would therefore be an order made without the Government discharging its statutory duty to satisfy themselves for some germane reason that the reference should not be made. The question, therefore, that I have to determine is whether the reason that has been assigned by the Government in this case is germane to the consideration of the question of making or not making a reference or wholly extraneous to it.

8. Now, as I have pointed out earlier, it is the function of the conciliation officer u/s 12(4) to set out in his failure report a full statement of the facts and circumstances relating to the dispute and the reasons on account of which in his opinion a settlement could not be arrived at; and it would therefore be useful to look at this report in order to find out what was involved in the decision of the question as to whether or not a reference should be made.

9. With regard to the demand for bonus, the report states that for the year 1949-50 the bonus was equivalent to 5 months'' basic wages and for 1950-51 to 5 1/2 months'' basic wages. The bonuses in these two years were not arrived at by an amicable settlement between the parties but through the machinery provided by the Industrial Disputes Act. In 1951-52 the bonus was equivalent to 5 1/2 months'' basic wages by an agreement. The bonus claim was for the year 1952-53; and whilst the company justified the bonus equivalent to 3 months'' basic wages which it had declared on the basis of the bonus for 1951-52 which had been arrived at by an agreement between the parties, the employees claim that as the results of the working in 1952-53 were better than those in 1949-50 when bonus equivalent to 5 months'' basic wages had been granted they should be granted a higher bonus than that in 1949-50. The conciliation officer considered that there was considerable substance in this contention and he suggested to the management that a pro rata calculation should be made either on the basis of the bonus of 1949-50 or 1950-51 which had been determined by the industrial tribunal. This suggestion was not acceptable to the company. The conciliation officer also points out that there was a slow-down in 1952-53. The fact of the slow-down was admitted by the employees, but they pointed out that the slow-down was only for a part of the year and subsequently the employees had produced beyond their ordinary capacity, with the

result that the production of 1952-53 compared favourably with any normal year.

10. With regard to the classification of certain employees, the union had demanded that certain specified employees should be changed from the category of clock employees to that of monthly-paid staff and given the appropriate scale and other privileges and facilities enjoyed by the monthly-paid staff. The cases of some of these employees were dropped at their instance, and the dispute that survived as regards the rest was whether having regard to the work which they were called upon to do, their work was mainly of a clerical nature and therefore the demand that they should be taken on the monthly-paid roll was in consonance with the practice prevailing in other comparable concerns.

11. So far therefore as the dispute regarding classification was concerned, it is obvious that the slow-down did not have even the remotest connexion with that question. So far as the claim for bonus was concerned, if the slowdown had resulted in a diminution of profits as compared with the profits of other years, the fact of such diminution may conceivably have been a relevant consideration in determining whether or not a reference should be made, but that is not the reason assigned by Government for refusing to make a reference, and indeed in this case there certainly has been no diminution of profits as a result of the slow-down because the petitioners allege in their petition, Para. 13, that if profits for 1949-50 are taken to be 100 per cent the profits for 1952-53 were 123.6 per cent, a fact which is not denied by the company. It seems to me, therefore, that the mere fact of the slow-down was a consideration which was not germane to the determination of the question whether the dispute as to bonus should or should not be referred to adjudication. In the affidavit put in by Mr. Pimenta, the Assistant Secretary to the Government of Bombay, the reason assigned for not making a reference is in terms:

The Government bona fide came to the conclusion that the employees by reason of their conduct, namely, resort to go-slow during the year 1952-53, did not deserve to have the dispute referred to a tribunal.

In other words, the view that Government took was that employees must behave as good boys, if they wished to avail themselves of the remedies provided by the Industrial Disputes Act. I see no warrant in the Act whatsoever for any such view. The principle that he who seeks equity must come with clean hands cannot apply when one is seeking not equity but a statutory remedy ; and no misconduct--and I am assuming for this purpose that go-slow is misconduct-can disqualify the employees from seeking a reference under the statutory provision contained in that behalf in the Industrial Disputes Act. In the affidavit of Mr. Pimenta it is further pointed out that the result of the go-slow was that the national economy in this particular item of production was disrupted. It appears somewhat strange that Government should have failed to recognize that by refusing to make a reference they were not helping in preserving national economy because nothing could have prevented the employees from resorting to a strike in order to enforce their

demand, and the only result of a failure to refer could have been a further disruption of national economy if the hot-heads amongst the employees had prevailed and the union had resorted to a strike. It seems to me, therefore, that Government in considering that by reason of the go-slow they should refuse a reference were giving a reason which was entirely extraneous to the question of whether the matter should or should not be referred, and Government, therefore, had, in my opinion, failed to exercise the duty that was cast on them u/s 12(5) to come to a decision on a consideration of matters which were germane to the issue.

12. A reference was made by Mr. Vimadalal in his arguments to the provisions of Section 10 of the Industrial Disputes Act, 1947; and his argument was that since the power to make a reference u/s 10(1) was discretionary there is no reason why in the case of a reference u/s 12(5) merely because conciliation proceedings intervened, that power should be fettered with any further restrictions. Now, it appears to me that there is nothing in common between Section 10 and Section 12. Section 10 is in a totally different chapter, Chap. III, and Section 12 is in Chap. IV. Chapter III confers certain powers on the appropriate Government to make a reference suo motu or at the instance of parties and without the intervention of conciliation proceedings, while Chap. IV in the main deals with conciliation proceedings. The provision of Section 10 on which Mr. Vimadalal has relied is the provision in Section 10(1) that if the Government is of opinion that a dispute exists it may make an order of reference, and it has been held that their discretion in making or not making it is absolute. There is a proviso to this section which relates to disputes which concern a public utility service, and the proviso requires that Government shall make a reference unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do. The contention of Mr. Vimadalal is that even in the case of a dispute relating to a public Utility service, where Government is otherwise bound to make a reference, the saving clause provides that it may refuse to make a reference where it considers it inexpedient BO to; do; similarly in the case of a decision as to the question of making a reference u/s 12(5) if Government consider it inexpedient to make a reference, it is not bound to do so. Now, as I have said earlier, the provisions of Section 10 are not comparable with the provisions of Section 12 at all; but in so far as they are of assistance in interpreting Section 12(5), I having held that the word "may" in Section 12(5) is to be interpreted as "shall," if it was intended that Government should have the power to refuse to make a reference if they thought it inexpedient so to do, one would have expected to find in section Section 12(5) words similar to the words which appear in the proviso to Section 10(1). The absence of such words makes it, in my opinion, impossible to argue that Government has the power u/s 12(5) to refuse to make a reference on the ground that they consider it inexpedient to do so.

13. Before considering the relief to which the petitioners are entitled, I must dispose of a preliminary plea raised on behalf of the company that there has been undue delay in the presentation of the petition and therefore no relief should be granted.

Now, the order of Government refusing to make a reference is dated 11 December 1954 and was received by the petitioners on 14 December 1954. The petition was declared on 18 February 1955 and the contention is that the delay of over two months is sufficient to disentitle the petitioners to any relief. Mr. Vimadalal has relied upon a case in 55 Bom. L.R. 922 in which a delay of 2 months and 10 days was considered to be sufficient to disqualify the petitioners from getting any relief, but it appears to me futile to cite cases for the exact period of delay which has been considered to be sufficient in a given case to disqualify any party from getting relief. Whilst on the one hand cases can be cited where even a delay of a month had been considered too long, on the other, cases can also be cited where relief has been granted on a writ even after six months. There is no hard and fast rule as to the exact period of delay which would necessarily disqualify the petitioners from getting any relief, and it must of necessity depend on the facts of each case and the surrounding circumstances. Now, in this particular case the second petitioner in his affidavit in rejoinder dated 14 April 1955 points out that when Government refused to make a reference the union had two options before it:

(1) to resort to a strike, and

(2) to seek to have their demands either conceded or adjudicated upon without resort to a strike.

A majority of the members of the union considered that every effort should be made to settle the matter amicably if it were possible with the company itself, and failing that only, resort to a court of law in order that a strike should be averted in any event. It is in an effort to bring about an amicable settlement with the company that most of the time was taken up before the petition was presented and these efforts are set out in the affidavit that I have referred to. In my opinion any bona fide attempts made on behalf of the employees to bring about an amicable settlement and to prevent a possible strike, ought to be encouraged by all right-thinking men and if a month or two was taken up in the pursuit of peace in industry and in order to avoid the possibility of a strike, I am not prepared to consider such time as delay which would disqualify the employees from seeking relief in a court of law if their efforts at an amicable settlement unfortunately fail ultimately. I do not, therefore, consider that in this case the petitioners are disentitled to any relief by reason of the delay.

14. Coming next to the actual relief to which they are entitled, it seems to me obvious that the decision to refer or not to refer u/s 12(5) is that of the Government and the Court cannot substitute its own decision in place and stead of the decision of the Government. But where it is found that the Government has not discharged its duty to arrive at a decision on a consideration of facts which are germane to the issue and has allowed its decision to be influenced by an entirely extraneous consideration, as I have held it has in this case, the only order that the Court can make is to issue a mandamus calling upon the Government to arrive at a fresh

decision and and in doing so ignore the fact that there was a slow-down and any other fact that may not be germane to the consideration as to whether a reference should or should not be made.

15. Counsel for the petitioners submitted that in this particular case Government had made it abundantly plain by the affidavit of Mr. Pimenta that the only reason that induced them not to make a reference was that the employees were guilty of a slow-down, and from that he argues that there could be no other reason. It seems to me that the sequitur does not necessarily follow. It may be that if the Government thought that a particular reason was adequate to enable them not to make a reference they did not apply their mind and consider whether there were any other reasons for not making a reference. It is but right that they should have an opportunity to do so, but Mr. Sule for the petitioners says . that Government is bound to find some reason for not making a reference in order to uphold the order that they originally made in refusing to make a reference. I am quite unable to entertain any such suggestion. This Court has far too great a confidence in the integrity of the local Government to entertain the suggestion that because an order of theirs has been successfully challenged, when they are required by the Court on a mandamus to reconsider the matter, if they are satisfied that there is no germane reason for refusing a reference, they will invent some in order to uphold their original decision of not making a reference; and I have no doubt whatsoever that if in fact no other reason exists for not making a reference, Government will proceed to make a reference.

16. The order, therefore, that I propose to make on this petition is that a mandamus shall issue against the State of Bombay to reconsider the question of making or refusing to make a reference u/s 12(5) ignoring the fact that there was a slow-down and taking into account only such reasons as are germane to the question of determining whether a reference should or should not be made, absolute with costs against both the respondents.