

(1958) 11 BOM CK 0029

Bombay High Court

Case No: O.C.J. Miscellaneous Petition No. 181 of 1958

Engineering Staff Union

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision: Nov. 26, 1958

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 10(1), 12, 12(4), 12(5)

Citation: (1959) 2 LLJ 729

Hon'ble Judges: K.K. Desai, J

Bench: Single Bench

Judgement

1. This is a petition under Art, 226 of the Constitution whereby the petitioners have prayed for a writ of mandamus ordering modification of an order of reference dated 29 January, 1958, made under S. 10(1)(d) of the Industrial Disputes Act, so as to substitute the words "1 January, 1954" and "1 February, 1956" at appropriate positions in place of the words "1 February, 1957" contained in that order of reference. The relief claimed as in prayer (b) is not pressed before me.

2. The short relevant facts as appearing in the petition are that in the first week of February 1957, petitioners 1 (who are a registered union) as representing the employees of respondent 2 put forward a demand for in-increase of dearness allowance with retrospective effect as from 1 January, 1954. As there was no settlement between the parties, the matter was taken before the conciliation offer in conciliation proceedings. The conciliation offer made a report under S. 12(4) of the Industrial Disputes Act and petitioner 1 thereafter requested the Government to make a reference of the dispute for adjudication by "industrial tribunal."

3. The Government made the reference order in question before me dated 29 January 1958, under the provisions of S. 10 of the Act. The Government, by its letter dated 29 January, 1958, informed petitioner 1 inter alia as follows :

"That Government does not propose to refer it (dispute) to a tribunal for adjudication under Sub-section (5) of the said S. 12 as the same has been referred to the tribunal under Government order ... dated 29 January 1958.

I am to add that as the dispute was raised on 4 February 1957, the retrospective effect has been changed to 1 February 1957."

The whole of the contention of the petition and the arguments before me related to the change in the date regarding the retrospective operation of the demand in connexion with dearness allowance. The petitioners' case is that their demand was for increase retrospectively from 1 January, 1954, and the reference has been made for such increase only as from 1 February, 1957, and the reference is by reason of that alteration in dates for the reasons mentioned in the petition liable to be modified by Court. Having regard to that contention, it is first necessary to quote in detail the industrial dispute in question or the demand made by the petitioner and also the dispute mentioned in the order of reference in question and thereafter to summarize the contentions mentioned in the petition.

4. The demand put forward and/or industrial dispute was as follows :-

"Dearness allowance. - The existing dearness allowance payable to the monthly rated employees of the company at its Wadala establishment should be revised and increased retrospectively from 1 January 1954 as under :

Pay slab	Dearness allowance at cost of living indices 311 to 320	Variation in per cent per 10 points movement in index number PER CENT
1 to 100 ...	80 per cent of basic pay or revised textile scale for 31 days whichever is higher.	8
PER CENT		
101 to 200 ...	40	4
201 to 300 ...	20	2
Over 300 ...	20	2

(b) Increase in dearness allowance, if and when granted to the monthly rated staff of the company at its Wadala establishment should also be granted to Sri P. S. Pandit

retrospectively from 1 January 1956."

5. The relevant part of the order of reference as appearing in the Bombay Government Gazette, dated 13 February 1958, Part I-L, p. 938, runs as under :

"Whereas the Government of Bombay is of opinion that an industrial dispute connected with the matter specified in the schedule appended hereto exists between the Indian Hume Pipe Company, Ltd., Bombay, and workmen (monthly rated staff) employed under it at its Wadala factory;

Now, therefore, in exercise of the powers conferred by Clause (d), Sub-section (1), of S. 10, of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is pleased to refer the said dispute for adjudication to the tribunal consisting of Sri Meher constituted under Government notification, Labour and Social Welfare Department, No. 1 D.A. 1157(b), dated the 12 March 1957.

Schedule

Dearness allowance. - The existing dearness allowance payable to the monthly rated employees of the company at its Wadala establishment should be revised and increased retrospectively from 1 February, 1957 as under :-

Pay slab	Dearness allowance at cost of living indices 311 to 320	Variation in per cent per 10 points movement in index number PER CENT
1 to 100 ...	80 per cent of basic pay or revised textile scale for 31 days whichever is higher.	8
PER CENT		
101 to 200 ...	40	4
201 to 300 ...	20	2
Over 300 ...	20	2

(b) Increase in dearness allowance, if and when granted to the monthly rated staff of the company at its Wadala establishment should also be granted to Sri P. S. Pandit, retrospectively, from 1 February 1957."

It is contended in the petition that

(i) the demand as made in respect of retrospective effect has not been referred to adjudication;

- (ii) the reason given by the Government for not making a reference under S. 12(5) of the Act is non-existent and it is simply not true;
- (iii) simply by having recourse to the provisions of S. 10(1)(d) of the Industrial Disputes Act the Government cannot alter the character of the dispute in any manner;
- (iv) having regard to the provisions and the scheme of the Act once a dispute had been subject-matter of conciliation proceeding it was not proper for the Government to make a reference under S. 10(1)(d) of the Act;
- (v) if the Government was satisfied that there was a case for the same, reference must be made under S. 12(5) of the Act;
- (vi) a reference under S. 10(1)(d) of the Act was only a colourable device for the purpose of avoiding to make a reference of the dispute as raised by the petitioners; and
- (vii) that the modification of the demand relating to dearness allowance made by the Government amounted to an adjudication of the dispute with regard to its aspect of retrospective effect and it was not competent or open to the Government to pronounce its judgment on the propriety or justifiability of the workmen's demand, that being the function of an industrial tribunal only.

Those are the contentions raised in the petition. I have recited those contentions to clarify that the same are based on the provisions of S. 12 of the Act and that not one of them had been pressed before me by Mr. Phadke, presumably because by reason of the recent decisions of this Court it is impossible to sustain the same. He has, however, relying upon the provisions of S. 10(1)(d) of the Act, made certain contentions, and I have allowed him to do that inasmuch as it was desirable that there should be no grievance that the whole of the case of the petitioners was not allowed to be argued before me.

6. Mr. Phadke contends that in the matter of a reference of dispute by the Government under S. 10(1)(d) of the Act the dispute as contained in the demand made on behalf of the employees must be wholly referred to the tribunal. He says that Government cannot modify the demand made and make a reference in respect of the modified demand or dispute. He says that the Government has no right to impose its own opinion on the tribunal as the Government has done in the present case. If the Government wants to act under S. 10(1)(d) of the Act, Government is bound to make a reference in respect of the whole of the demand and/or dispute raised between the employer and the employee. He has, in developing those contentions, laid emphasis on the fact that it was patent on the record before the conciliation offer and in the report of the conciliation offer and otherwise also that the demand of the petitioners was for revision of dearness allowance retrospectively from 1 January, 1954. He says that no rational person could have formulated an

opinion that that demand was for increase retrospectively from 1 February, 1957 only. The opinion which the Government should have formed and must have formed regarding the dispute raised could be that the increase was demanded retrospectively from 1 January, 1954. The opinion now formed by the Government was entirely unreasonable and irrational, and that the Court is entitled to examine that opinion and make a finding that it was arbitrary and capricious and that the dispute forming the subject matter of reference should have been for increase retrospectively from 1 January, 1954. He further contends that having regard to the arbitrary and capricious opinion as formed by the Government as patent on the order of reference I should come to the conclusion that Government has not applied its mind at all or has for its own reasons misconceived its jurisdiction under S. 10(1)(d) and has for collateral purposes attempted to impose its own opinion in respect of a matter which under the scheme of the Act must be decided by a tribunal and was within the exclusive jurisdiction of a tribunal. These contentions I will examine with reference to the provisions of S. 10 of the Act, relevant parts where-of run as under :

"10. (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing -

(a) refer the dispute to a board; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court of inquiry; or (c) refer the dispute or any matter appearing to be connected with or relevant to the dispute ... to a tribunal for adjudication; or

(d) refer the dispute of any matter appearing to be connected with, or relevant to, the dispute whether it relates to any matter specified in the Sch. II or Sch. III to a tribunal for adjudication."

There are provisos to this section which are for the purpose of this case unnecessary to quote.

7. Now, it is clear on the language of the section that the decision and the opinion for a reference is to be formed by the Government. That decision and opinion is administrative and is entirely left to the subjective decision and opinion of the Government. The Court cannot impose its opinion on the Government. It is also clear having regard to the use of the following words in Sub-secs. (b), (c) and (d) that the Government is not bound to refer the whole of the dispute or the dispute in all its aspects as raised to a tribunal or a Court. The words to which reference may be made are "matter appearing to be connected with or relevant to the dispute," and "the dispute or any matter appearing to be connected with or relevant to the dispute." Admittedly the order in question is made under the provisions of S. 10(1)(d) of the Act. The aforesaid words give and/or confer jurisdiction and power on the Government to make a reference in respect of any matter connected with or any relevant part of dispute and/or the whole of the dispute. If it was intended that the

Government was bound whilst making a reference under S. 10 to refer the whole of the dispute and/or the whole of the demand to a Court or a tribunal, the aforesaid words would not have been used in the section and would have been inappropriate altogether. These words are, in my view, indicative of the clear intention of the legislature to leave the question of the subject-matter of reference under S. 10 to the subjective decision and opinion of the Government. There is no obligation on the Government under the provisions of this section while making a reference to a Court of enquiry or a tribunal to make a reference of the whole of the dispute and/or the whole demand made. On the contrary the matter is left at large.

8. That being the true construction of this section, the whole of the argument raised on behalf of the petitioners appears to be entirely misconceived and not sustainable. The Government was, whilst deciding the reference in this case, making a reference in respect of the dispute raised but with reference to a smaller and shorter period as regards the retrospective effect in respect of the demand made for increased dearness allowance. The Government was in its discretion entitled to restrict the reference in the aforesaid manner. There was no obligation on the Government to make a reference of the whole of the demand made by the petitioners as is contended by Mr. Phadke. I negative the contention of Mr. Phadke that the Government had not applied its mind and had misconceived its jurisdiction while making a reference only for a smaller period.

9. Mr. Phadke has cited before me Art. 119 from Vol. XI of Halsbury's Laws of England (3rd Edn.) relating to the jurisdiction of the Court to examine administrative decision of executive authority. Mr. Phadke has also cited in the same connexion the decision in the case of [Brundaban Chandra Dhir Narendra Vs. The State of Orissa in the Revenue Department and Others](#), . The propositions made in these authorities are unquestionably well established. The question of my going into details and examining the administrative decision of the Government in this case has, in my view, not arisen at all. I have, therefore, not dealt with these authorities in detail in this case.

10. Having regard to my aforesaid findings, the position must fail. The petition is dismissed with costs. Rule discharged.