(1958) 12 BOM CK 0013

Bombay High Court

Case No: Special Civil Application No''s. 2358 and 2359 to 2362 of 1958

The Maharana Mills Kamdar Union and Others		APPELLANT
	Vs	
N.L. Vyas and Another		RESPONDENT

Date of Decision: Dec. 10, 1958

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2

Citation: AIR 1960 Bom 29 : (1959) 61 BOMLR 678

Hon'ble Judges: Chainani, C.J; Shelat, J

Bench: Division Bench

Advocate: K.K. Singhvi, for the Appellant; K.M. Nanavati, Vithaslbhai B. Patel and J.B. Patel, for the Respondent

Judgement

Chainani, C.J.

(1) The petitioners in these five applications were employees of the Maharana Mills Ltd. at Porbundar, respondent No. 2, to whom I will hereinafter refer to as ''the respondent''. In 1954-55 there were disputes between the respondent and its workmen represented by Maharana Mill Majoor Mahajan Sangh. Three references were then made by the Saurashtra Government under S, 10 of the Industrial Disputes Act to the Industrial Tribunal. These were References No. 47 of 1954, 91 of 1955 and 102 of 1956. During the pendency of these refrerences before the Industrial Tribunal the parties arrived at a settlement, by which they agreed to refer the disputes between them to private arbitration. On 8th Jue 1956 an application signed on behalf of both the parties, that is to say, the respondent and the workmen represented by Maharana Mill Majoor Mahajan Sangh, was made to the Industrial Tribunal in each of the three cases pending before it. In this application it was stated that the parties to the disputes had agreed "to settle all matters by private negotiatiibs and/or arbitration as per agreement" attached to the application and

they requested the Tribunal "to grant permission to withdraw all the cases without the same being dismissed". The agreement annexed to the application was in the following terms :

"The Maharana mills Private Ltd., Porbandar and the Maharana Mill Majoor Mahajan Sangh, Porbandar, do hereby agree and settle that the matter in adjudication No. 102 of 1955 be withdrawn from tthe Hon''ble without the same being dismissed and settle the same as follows:

Terms of Settlement.

1. That the following Arbitration Board will finally decide the matter in Adjudication No. 102 of 1955.

"Arbitration Board

"Mills Representatives:

1. Shri Ambalal Maganlal Joshi and/or

2. Shri Prafulchandra P. Gundavada.

"Union''s Representatives:

1. Shri V. K. Trivedi, and/or

2. Shri Kantilal B. Shah.

2. In case of difference between the arbitrators, the arbitrators shall jointly appoint an Umpire, failing agreed decisions Hon''ble the Industrial Tribunal Shri D. L. Master will act as Umpire.

3. The decision of the arbitration board will be given within two monsth hereafter.

4. The decision of the Arbitrators and/or the Umpire will be binding t the parties.

5. This settlement will be confirmed before Conciliation Officer within 15 days hereafter."On the application in reference No. 47 the Industrial Tribunal made the following order:

"The terms of agreement have been filed by the parties. I, therefore, give my awward as per terms of settlement appended herfewith."

Orders in practically the same terms were made in the other two references. The orders which are styled as Awards, were made in two references on 9th June and in the third on 11th June 1956. They were published as awards in the Saurashtra Government Gazette on 13th June, 1956.

(2) The petitioners in these five applications were dismissed between 14th June 1956 and 16th June 1956 on different charges of abusing and asssaulting the officers of the Mills, of damaging property belonging to the Mills and for refusing to perform

their normal duties by adopting go-slow Indeustrial Tribunal under S. 33A of the Act by the petitioners, in which they contended that as they had been dismissed within one month from the date of the publication of the awards i.e. 13th June 1956, there had been a contravnetion of the provisions of S. 33 of the Act. They therefore prayed for orders directing their reinstatement and the payment to them of wages from the dates of their dismissal.

(3) The respondent resisted the applications made by the petitioners on various grounds. It was contended that as the Industrial Tribunal had allowed the parties to withdraw the references pending before it, it could not make any awards. Even though the orders made by it were termed as awards, they were not awards within the meaning of the Act. As they were not awards, they were not required to be published and the question of their enforceability did not arise. It was, therrefore, urged that S. 22(3) did not apply and that the proceedings before the Tribunal had terminated on the dates on which the Tribunal had orders allowing the disputes to be withdrawn. The references made by Government to the Tribunal were in respect of disputes between the respondent and its workmen respresented by the Maharana Mill Majoor Mahajan Sangh. They belong to a rival union. It also appears that after the references had been made to the Industrial Tribunal, the Tribunal had not issued general notices to all the persons employed in the Mills. It was therefore contended on behalf of the respondent that the petitioners were not parties to or concerned in the disputes referred to the Tribunal or bound by the awards made by the Tribunal. Bothe these contentions were accepted by the Industrial Tribuna, which accordingly dismissed the applications made by the petitioners. The orders made by the Tribunal dismissing the applications of the petitioners have been challenged in these five special civil applications.

(4) In order to appreciate the arguments, which have been advanced, it is necessary to consider the provisions of the Industrial Disputes Act, under which the references had been made to the Industrial Tribunal as they stood at that time. Section 2(b) of the Act defines the word "award" as meaning an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto. Section 10 provides for a reference of an Industrial dispute being made by the appropriate Government to a Tribuna,. Section 15 provides that where an Industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof,submit its award to the appropriate Government. Section 17 provides for publication fpor the awards in the Official Gazette. Section 17A states that the award of the Tribunal shall become enforceable on the expiry of thirty days from the date of its publication under S. 17. Section 18 provides that an award, which has become enforceable, shall be binding on all parties to the industrial dispute and on all persons employed in the establishemnt, to which the dispute relates, on the date of the dispute ;and all persons who subsequently become emplloyed in that establishemen. Sub-section (3) of S. 20 states that proceedings before a Tribunal shall be deemed to have

concluded on the date on which the award becomes enforcceable under s. 17A i.e. on the expiry of one month from the date of publication of the award in the Official Gazette. Section 33 states that during the pendency of the proceeding before a Tribunal in respect of an industrial dispute, no employer shall dismiss any workman concerned in such dispute save with the express permission in writing of the Tribunal. Section 33A, under which the proceedings in the present cases were instituted, states that where an employer contravenes the provisions of S. 33 during the pendency of proceedings before a Tribunal, any employee aggfrieved by such contravention, may make a complaint in writing to such Tribunal and on receipt of such complaint the Tribunal shall adjudicate upon the complaint as if it was a dispute reforred to or pending before it in caccordance with the provisions of this Act.

(5) The orders made by the Industrial Tribunal on the three references, whichit has described as awards, were published on 13th June 1956. The petitioners were dismissed within a week thereafter. The petitioners'' case is that the proceedings before the Tribunal must under sub-section (3) of section 20 be deemed to have been pending till 13th July 1956 and that as they were dismissed before then, the provisions of S. 33 have been contravned. the respondents''s contention, on the other hand, is that the orders made by the Tribunal on the three references were not awards within the meaning of the Act, that the proceedings before the Tribunal were concluded when the Tribunal passed orders on 9th June 1956 and 11th June 1956 allowing the disputes to be withdrawn and that consequently no proceedings were pending before the Tribunal when the petitioners were dismissed on and after 14th June. The material question for decision therefore is whether the orders passed by the Tribunal were awardws within the meaning of the Act. According to the definition given in section 2(b) an award must b (1) a determination, (2) the determination must be by an Industrial Tribunal and (3) the determination must be of an industrial dispute or any question relating thereto. Where a Tribunal allows a matter to be withdrawn in order that it may be referred to a private arbitrator for adjudication, there remains no dispute before it, on which it can adjudicate there is also no determination of the dispute itself; the dispute continues, but instead of being decided by the Industrial Tribunal, it is to be decided by private arbitration. There is, therefore, no dertermination of the dispute in such cases, much less is it a determination by an Industrial Tribunal.

(6) Mr. Singhvi has contended that the three references could not be withdrawn, as these references had been made to the Tribunal by the State Government and as under S. 15 the Tribunal was bound to proceed with the reference until it had made the awards. He has relied on the decision of the Supreme Court in The State of Bihar Vs. D.N. Ganguly and Others, in which it was held that Government has no power to cancel or supersede a reference made by it under S. 10 of the Act. That case does not, however, decide that the parties, between whom the dispute is to be adjudicated upon by the Industrial Tribunal.. It is however, not necessary to decide

this point in these applications, because the question before us is not whether the withdrwals were legal, but whether the orders permitting the withdrawals amount to awards.

(7) The orders passed by the Tribunal on the applications for withdrawal made to it were that it was giving awards as per terms of the settlements. The terms of the settlement show that the disputes between the parties had not been resolved; all that had been agreed was that these disputes should be referred for decision to certain specified arbitratiors. There was no decision by the Tribunal on the matters in dispute. Consequently, there was no determination of the disputes within the meaning of the Act. Even though therefore the orders made by the Tribunal are described as awards and were published as such in the Official Gazette, they were not awards within the meaning of the Act. the position might have been different, if the Disments and the Tribunal had been asked to make awards in terms of the agreements, but that is not the case here.

(8) Mr. Singhvi has relied on the decision of a singly Judge of the Kerala High Court reported in Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum, . In that case during the prendency of a reference before an Industrial Tribnal, the parties agreed to refer ththe matters in dispute to arbitration of certain persons. An application was then made to the Tribunal for permission to withdraw the dispute. The Tribunal after holding an inquiry came to the conclusion that the terms of the settlement were fair and beneficial to the workers. the Tribunal then made an award accepting the terms of settlement and holding that there was no subsisting dispute to be decided by the Tribunal. The question then arose whether parties by agreement between them could withdraw a reference made to an Industrial Tribunal. It was held that they could do so, and that the Industrial Tribunal was competent to allow the withdrawal of the dispute. The judgment shows that the learned Judge was inclined to regard the order made by the Tribunal as an award. He has observed that the expression "determination" in the definition of "award" indicates only coming to an end, which may be in any way whatever. With respect, it seems to us however that the definition clearly contemplates determination of the dispute by an Industrial Tribunal. Where a dispute is withdrawn from the purview of an Industrial Tribuna, the proceedings before the Tribunal come to an end by the Tribunal allowing the dispute to be withdrawn, but there is no determination of the dispute by it. A distincition must be drawn between the determination of proceedings before a Tribunal. In the present cases, the effect of the orders passed by the Tribunal was that the proceedings before it came to an end, but the disputes still continued and there was no determination thereof by the Tribunal. Consequently, the orders made by the Tribunal are not awards within the meaning of the Act.

(9) Section 15 of the Act provides that where an industrial dispute has been referred to a Tribunal it shall on the conclusion of proceedings before it submit its award. Mr. Singhvi has therefore contended that in case we hold, as we are inclined to do, that

the orders made by the Tribunal cannot amount to awards, the proceedings must be held to be still pending before the Industrial Tribuna,. This argument cannot be accepted, because rightly or wrongly the Tribunal allowed the parties to withdraw the matters in dispute from adjudication by it. After the Tribunal passed order sanctioning the withdrawals, the proceedings, before the Tribunal came to an end. The orders allowing the matters in dispute to be withdrawn were passed on 9th and 11th June. The petitioners wsere dismissed thereafter.. Consequently no proceedings were pending before the Tribunal., when the petitioners were dismissed. The provisions of S. 33 cannot therefore be said to have been contravened.

(10) The view taken by the Industrial Tribunal is therefore correect. The rules issued on the five applications will therefore be discharged. there will be no order as to costs.

(11) Rule discharged.