State Of Maharashtra vs Kamani Employees' Union & Ors on 27 April, 1973

Equivalent citations: 1975 AIR 635, 1974 SCR (1) 108, AIR 1975 SUPREME COURT 635, 1975 4 SCC 841, 1975 LAB. I. C. 387, 44 FJR 358, 1974 (1) SCR 108

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
KAMANI EMPLOYEES' UNION & ORS.

DATE OF JUDGMENT27/04/1973

BENCH:
VAIDYIALINGAM, C.A.
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VAIDYIALINGAM, C.A.
REDDY, P. JAGANMOHAN

CITATION:
1975 AIR 635 1974 SCR (1) 108
1975 SCC (4) 841

ACT:
Industrial Disputes Act, 1947, S. 10(1)(d)-Dispute relating to revision of Production bonus referred to Tribunal-Subsequently another reference made as to question whether a scheme of Production bonus adopted by another company should be adopted or not-Second reference is connected with first dispute and is competent.

HEADNOTE:
On December 19. 1962 the Government of Maharashtra referred certain ,disputes between the respondent workmen and their employers, to the Industrial Tribunal. Dispute no. 3 related to Production bonus payable to the workmen under the existing scheme. When the adjudication of the above reference was pending, the State Government on January 18,

1964 made another reference to the Tribunal of the question : "Should the existing Incentive Scheme of Production bonus be replaced by the new scheme evolved by Messrs. Ibcon Private Limited in their report dated October 1963 as desired by the Management ?" The respondent union filed an application before the Tribunal that the second reference dated January 18, 1964 should not be adjudicated upon as it really amounted to withdrawal of the previous reference made on December 19, 1962, and interfered with the powers of the Tribunal in dealing with dispute no. 3 in the first reference. The Tribunal overruled the objection but the High Court in a writ petition under Art. 226 accepted the contention of the union.

In appeal by the State on certificate,

HELD : Even without the second reference, the Tribunal, when dealing with demand no. 3 of the first reference. could have also considered the question of adopting the scheme evolved by Ibcon Private Limited because it was a relevant matter, and also connected with the Production Bonus Scheme. When it was so open to the Tribunal to consider the Scheme of Ibcon the fact that the Government specifically referred for consideration the said Scheme, makes no difference. At any rate the question covered by the second reference was a matter 'connected with or relevant' to dispute no. 3 of the first reference and hence the State was well within its jurisdiction under section 10(1)(d) of the Industrial Disputes Act in passing the order dated January 18, 1964. Accordingly, the appeal must be allowed and the judgment and order of the High Court must be set aside. [111G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1098 of 1969.

Appeal by certificate from the judgment and order dated March 15, 1966 of the Bombay High Court in Special Civil Application No. 1067 of 1964.

M. C. Bhandare, and S. P. Nayar, for the appellant. R. P. Kapur, for respondent No. 2-1 The Judgment of the Court was delivered by VAIDIALINGAM, J.-This appeal, on certificate, by the State of Maharashtra is directed against the judgment and order of the Bombay High Court dated March 15, 1967, Special Civil Application No. 1067 of 1964, quashing the order of the State Government dated January 18, 1964, making a reference to the industrial Tribunal.

At the outset, it must be stated that the workmen who filed the 'Writ Petition in the High Court and got an order in their faVour, have not appeared before us to support the order of the, High Court. On behalf of the management, which was a party before the Tribunal and before the High Court it has been represented that 'it is no longer. interested in these proceedings.

It is necessary to state a few facts leading upto the filing of the writ petition in the High Court. On December 19, 1962 the State. Government referred certain disputes for adjudication to the Industrial Tribunal The matters in disputes included various items; but it is only necessary to refer to dispute No. 3 which related to the Production,, bonus. That dispute relating to Production Bonus in Part I for Daily Rated workmen was as follows "3. Production Bonus.

The, present incentive scheme should be revised as under

(a) The scheme should be made applicable to all the departments of the company.

(b) When the production in the establishment reaches, 500 tons in a month all the daily rated workers should get 10 per cent of their total earnings as production bonus. The number of workmen being the average number employed in the year 1960.

(c) For every 10 tons increase in a month's production above 500 tons a 2% increase in the percentage should be given over and. above that in clause (b) above.

(d) The existing by laws and clauses regarding the absenteeism etc. should be abolished.

(e) Bonus should be determined by the ratio of days filled in by a worker to the number of working days in a month.

(f) The above benefits should be paid with retrospective effect from 1st July 1961."

In part 11. for Monthly Rated employees, the dispute regarding Production Bonus was as follows "3. Production Bonus.

(i) Monthly rated employees connected directly with production should be paid production bonus at the same rate paid to daily rated workmen.

(ii) 50% of the average production bonus paid to the employees directly connected with production, should be paid as productions bonus to all other monthly rated employees. Production bonus for all monthly rated employees should be paid with retrospective effect from 1st July, 1961."

When the adjudication on that reference was pending, the State Government on January 18, 1964. made another reference to the same Tribunal as follows "Should the existing Incentive Scheme of Production Bonus be replaced by the new Incentive Scheme evolved by Messrs. Ibcon Private Limited in their report dated October 1963 as desired by the Management ?"

In this order of reference, it was stated that a previous reference had already been made on December 10, 1962, regarding the revision of production bonus scheme for the workmen of the company. It is further stated that the company made a representation Co the State Government that the terms of reference already made

should be supplemented so as to include the above question also. The State. Government has also stated in the said order that it is of the opinion that the matter on which a further reference is asked for by the employer is "connected with or relevant to the said dispute". The reference to the "said dispute" is regarding the revision of production bonus which was already the subject of the reference dated December 19, 1962. The Tribunal appears to have passed an award on February 27, 1964, on all the disputes comprised in the 1st Reference excepting demand No. 3, which, as we have already stated, relates to the revision of the existing production bonus scheme. The union filed an application before the Tribunal, stating that the second reference dated January 18, 1964, should not be adjudicated upon. This objection was raised on the ground that the order dated January 18, 1964, really amounts to the withdrawal of the previous reference made on December 19 1962 and that it interferes with the exercise of the powers of the Tribunal in the matter of adjudicating dispute No. 3 already referred to it' The management opposed this application on the ground that the order dated January 18, 1964, does not have the effect of withdrawing the previous reference and that on the other hand, the dispute that was referred by order of 1964 was really one "connected with or relevant to the dispute" which was already pending adjudication before the Tribunal.

The Tribunal overruled the preliminary objection of the workmen about the competency of the Reference made on January 18, 1964; and it resulted in the latter approaching the High Court under Article 226. The High Court, in its present order,. accepting the contentions of the union, has held that the second order. dated January 18, 1964, had really the effect of superseding- the previous reference made on December 19, 1962 and also of interfering with the powers exercised by the Tribunal in respect of the previous reference.

Mr. Bhandare, learned counsel, for the appellant-State, has contended that the reasoning of the High Court that the second order of reference amounts to a withdrawal of the Previous order dated December 19, 1962, is fallacious. He has further pointed out that the subject matter of the reference dated January 18, 1964, could have been included in the order of December 19, 1962 and then it would have been perfectly competent for the Tribunal to consider the nature of the modification that is to be effected in respect of the production scheme then existing in the company. For that purpose, the Tribunal could have considered the nature of the modifications required by the workmen as well as the further question whether the Incentive me evolved by the Ibcon Private Limited could be adopted. Mr. Bhandare also pointed out that the question covered by the second reference is really a matter which "connected with or relevant to the dispute" already pending before the Tribunal.

We are of the opinion that the contentions of Mr. Bhandare have to be accepted. We are not able to appreciate the reasoning of the learned Judges that the order dated January- 18, 1964, has the effect of withdrawing or superseding the reference already

> made on December 19, 1962. There Will be Withdrawal of a reference, when the dispute referred is taken out of the purview of the Tribunal. There will be supersession of a previous Reference, when the second Reference comprises matters or disputes totally unconnected with or different from the disputes originally referred. Neither is the case here. On the other hand, in our opinion the question regarding the nature of the modification to be effected to the production bonus scheme has to be considered by the Tribunal having due regard to the scheme as it exists as well as to the various suggestions that may be made by the parties, namely, the employer and the employee. If the employer had relied on the scheme evolved by M/s Ibcon Private Ltd., it was certainly competent for the tribunal to consider how far that scheme could be adopted in this particular case. This aspect could have been considered by the Tribunal, because it is "connected with or relevant to the dispute No. 3"

relating to Production Bonus.

We are not inclined to accept the view of the High Court that the reference dated January 18, 1964, in any manner interferes with the powers of the Tribunal in adjudicating upon the demand No. 3 covered by-the reference dated December 19, 1962. In fact, in our view, the question that has been further referred by order dated January 18, 1964, is really a matter connected with or relevant to dispute No. 3 already pending adjudication before the Tribunal. The Tribunal had full jurisdiction when dealing with demand No. 3 covered by the order dated December 19, 1962, to consider the report mentioned in the subsequent reference dated January 18, 1964. It had full power to consider as to in what manner and to what extent the modification is to be effected in the Incentive Scheme obtaining in the company. In fact. even without the second Reference, the Tribunal, when dealing with demand No. 3 of the 1st Reference, could have, also considered the question of adopting the Scheme evolved by Ibcon Private Limited, because it was a relevant matter; and also connected with the Production Bonus Scheme. When lit was so open to the Tribunal to consider the Scheme of Ibcon, the fact that the Government specifically referred for consideration the said Scheme, makes no difference. At any rate the question covered by the 2nd Reference was a matter' "connected with or relevant' to dispute No. 3 of the 1st Reference and hence the State was well within its jurisdiction under section 10(1) (d) of the Industrial Disputes Act in passing the order dated January 18, 1964. The High Court has referred to various decisions regarding the powers of the Government, when making a reference, which, in our opinion, it is not necessary to consider, in the view that we take regarding the nature of the reference dated January 18, 1964.

In the result, the judgment and order of the High Court are set aside. The Tribunal will proceed to adjudicate on the question pending before it regarding the revision of the existing production bonus scheme. As the original reference itself is of the year 1962, the Tribunal will give a very expeditious disposal to this matter. The appeal is accordingly allowed. There will be no order as to costs.

G. C. Appeal allowed.