Supreme Court of India
Bombay Union Of Journalists & Ors vs The State Of Bombay & Anr on 19 December, 1963
Equivalent citations: 1964 AIR 1617, 1964 SCR (6) 22
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
BOMBAY UNION OF JOURNALISTS & ORS.

Vs.

RESPONDENT:
THE STATE OF BOMBAY & ANR,

DATE OF JUDGMENT:
19/12/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1964 AIR 1617 1964 SCR (6) 22
CITATOR INFO :

F	1967 SC1206	(9)
E	1975 SC1735	(4)
R	1975 SC2226	(9)
RF	1975 SC2238	(14)
R	1976 SC1474	(9)
E&D	1985 SC 860	(3,5)
R	1985 SC 915	(6)
F	1987 SC 695	(5,6)
R	1990 SC 255	(2,4,5)

ACT:
Industrial Dispute-Reference by Government-Discretion of Government-Industrial Disputes Act (XIV of 1947), s. 25F-Scope of-Duty of Government to make a reference.

HEADNOTE:
The appellants 2 and 3 were working journalists and they were retrenched on payment of three months salary in lieu of notice. The first appellant took up their case and alleged that the retrenchment was not bona fide and they were in fact victimised. On the failure of conciliation proceedings a report was submitted to the State Government (respondent No. 1). After hearing the parties concerned the Government

passed an order refusing to refer the dispute. The reasons given
23
for the refusal were that the termination of service was retrenchment and the management did not appear to have acted mala fide. Thereupon the appellants filed a petition under Art. 226 of the Constitution praying -for the issue of a writ of mandamus directing the Government to consider the matter afresh. The single Judge who heard the petition dismissed it and after appealing to a Division Bench without success the present -appeal was filed by special leave granted by this Court.

It was contended on behalf of the appellants that the Government while deciding whether a reference should be made has in fact decided the merits of the case and therefore the order of refusal to refer was illegal. The other contention was that the service of notice as required under s. 25F(c) of the Act was mandatory and the management not having served such a notice the Government ought to have taken this failure into consideration which the Government has not done.

Held: When the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider, prima facie, the merits of the dispute and take into account other relevant considerations which would help it to 'decide whether making a reference would be expedient or not. If the dispute in question raises a question of law, or disputed questions of fact the Government should not purport to reach final conclusions because these are matters which would normally be within the jurisdiction of the Industrial Tribunal. If the claim made is patently frivolous or is clearly belated or if the impact of the claim on the general relations between the employers and the employees in the region is likely to be adverse the Government may refuse to make a reference.

The State of Bombay v. K. P. Krishnan, [1961] 1 S.C.R. 227.

(ii) Clause (c) of s. 25F of the Act cannot be said to constitute a condition precedent which has to be fulfilled before retrenchment can be validly effected even though that clause has been included under s. 25F along with cls. (a) and (b) which prescribe conditions precedent. The observations in the following cases to the effect that s. 25F (c) is mandatory are clearly in the nature of orbiter dicta.

State of Bombay v. The Hospital Mazdoor Sabha, [1960] 2 S.C.R. 866, The District Labour Association, Calcutta v. Ex-Employees of Tea Districts Labour Association, [1960] 3 S.C.R. 206 and Workmen of Subhong Tea Estate v. The outgoing Management of Subhong Tea Estate, [1964] Y L.L.J. 333

(iii) Even if s. 25F(c) was constituted a condition precedent it would not necessarily follow that a writ of mandamus should be issued against the Government. The

breach of s. 25F(c) by the Management is a serious matter and the Government normally would refer such a dispute for adjudication. But the provision of s. 10(1) read with s. 12(5) clearly shows that even where there is a breach of s. 25F(c) the Government may have to consider the expediency of making a reference. But
24
if the Government refuses to make a reference for irrelevant considerations, or on extraneous grounds or acts mala fide a party would be entitled to move the High Court for a writ of mandamus.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 497 of 1963. Appeal by special leave from the judgment and order dated September 10, 1960, of the Bombay High Court in Appeal No. 10 of 1959.

Bishan Narain and 1. N. Shroff, for the appellant. H. N. Sanyal, Solicitor General of India, V. S. Sawhney and R. H. Dhebar, for respondent.No. 1.

S. V. Gupte, Additional Solicitor-General of India, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for respondent No. 2.

December 19, 1963.-The Judgment of the Court was delivered by GAJENDRAGADKAR J.- The principal point of law which this appeal raises for our decision relates to the construction of section 25F(c) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called the Act). The Bombay Union of Journalists which is the Trade Union registered under the Trade Unions Act, 1926, Mrs. Aruna Mukherji, and Mr. M. T. Thomas are appellants 1 to 3; and the State of Bombay, and the Indian National Press, Bombay, which is a Private Ltd. Co. are respondents 1 and 2 respectively in the present appeal. Appellant No. 2 was appointed on the staff of the second respondent on a salary of Rs. 500 p.m. with effect from 1st January, 1955. On the 30th November, 1957, she was served with -- notice of termination of her services with effect from 1st December, 1957. The notice recited the fact that the management in Consultation with the Editor had decided to retrench her services. Appellant No. 3 Mr. Thomas who was employed as a Sub-Editor in the 'Free Press Journal' some time in 1953, was similarly served with a notice of retrenchment dated the 30th November, 1957 by which his services were terminated as from the 1st December, 1957. In both the notices the two appellants respectively were told that their services had been retrenched under section 3(2) of the Working Journalists (Conditions of Service) and Miscel- laneous Provisions Act, 1955, and that in lieu of notice they would be paid their salaries for three months. Both the appellants collected their salaries for the month of November and ceased to work for respondent No. 2 as from the 1st December, 1957.

It appears that appellant No. 1 took up their cause on the 3rd December, 1957 and wrote to the Director-in-charge of the second respondent complaining that the action taken by the 2nd respondent smacked of vindictiveness against appellants 2 and 3, and demanded that the notices

issued should be withdrawn forthwith and they should be reinstated in their original posts. Respondent No. 2 did not concede the said demand; thereupon, appellant No. 1 moved the Labour Commissioner of respondent No. 1 for taking further action in the matter. At that stage, the Conciliation Officer intervened and called the parties before him. As a result of the discussion held before the Conciliation Officer, it was discovered that no settlement was possible, and so, the Conciliation Officer submitted a failure report under s. 12(4) of the Act on the 15th April, 1958. In this report, the Conciliation Officer expressed his opinion that in view of the stand taken by the parties, there was no possibility of any settlement, and so, he was compelled to record a failure.

After the matter was thus reported to respondent No. 1 by its Conciliation Officer, both the parties filed their res- pective statements before respondent No. 1. Respondent No. 1 considered the said statements and the report submitted by the Conciliation Officer and came to the conclusion that it was not necessary to refer the dispute to a Tribunal under s. 12(5) of the Act. This decision was communicated to the appellants by the Dy. Secretary, Labour and Social Welfare Department of respondent No. 1 by his letter dated 1st July, 1958. It is necessary to set out the reasons given in this letter for not referring the dispute to the Tribunal. These reasons were set out in the letter in these terms "(1) The termination of services of Shrimati Aruna Mukherji and Shri M. T. Thomas a ppears to be an act of retrenchment on the part of the management for which the management is willing to pay all the legal dues to the retrenched persons; and (2) in effecting the said termination the management does not appear to have acted mala fide or vindictively nor practised victimisation for trade union activities." The appellants then moved the Bombay High Court under Art. 226 of the Constitution for a writ of mandamus against respondent No. 1. It was urged on their behalf that the refusal of respondent No. 1 to refer the dispute to the Industrial Tribunal under s. 12(5) of the Act was illegal, and so, they prayed that the High Court should issue a writ directing respondent No. 1 to consider the matter afresh and decide whether a reference should be made or not. This writ petition was heard by a single Judge of the said High Court and was ultimately dismissed. The appellants challenged the correctness of the said decision by a Letters Patent Appeal before a Division Bench of the High Court. The Division Bench agreed with the view taken by the learned single Judge, and so, the appeal was dismissed. It is against this decision that the appellants have come to this Court by special leave.

The first contention which has been raised before us by Mr. Bishan Narain on behalf of the appellants is that the reasons given by respondent No. 1 in refusing to make a reference show that respondent No. 1 considered the merits of the dispute and came to the conclusion that the reference would not be justified; and Mr. Bishan Narain contends that in dealing with the merits of the dispute, while deciding the question as to whether a reference should be made or not under s.,12(5) of the Act respondent No. 1 has acted illegally and improperly. The relevant scheme of the Act as disclosed by s. 12 is clear. When any industrial dispute exists or is apprehended, the Conciliation Officer may hold conciliation proceedings in the manner prescribed by s. 12. If the Conciliation Officer's efforts to bring out a settlement of the dispute fail, then he makes a failure report under s. 12(4); -and s. 12(5) provides, inter alia, that 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 the Tribunal, it may make such reference. It, however, adds that where the appropriate Government does not make such -a reference, it shall record and communicate to the parties ,concerned its

reasons therefor. The argument is that s. 12(5) imposes an obligation on respondent No. 1 to record reasons for refusing to make a reference; and the reasons given by respondent No. 1 in the present case indicate that respondent No. 1 acted beyond its jurisdiction in proceeding to consider the merits of the dispute while deciding whether the reference should be made or not.

This argument must be rejected, because when the appropriate Government considers the question as to whether ,a reference should be made under s. 12(5), it has to act under s. 10(1) of the Act, and s. 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted under s. 12(4) the appropriate Government ultimately exercises its power under s 10(1), subject to this that s. 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made under s. 12(4). This question has been considered by this Court in the case of the State of Bombay v. K. P. Krishnan & Others (1). The decision in that case clearly shows that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication- or not, it may consider, prima facie, the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raise questions of law, (1) [1961] 1 S.C.R. 227.

the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the ap- propriate Government cannot purport to reach final con- clusions, for that again would be the province of the Indus- trial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under s. 10(1) read with s.12(5), or not. if the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the em- ploys in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under s. 10(1), and so, the argument that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of services of appellants 2 and 3, cannot be accepted.

Mr. Bishan Narain has then urged that the main point of controversy between the parties was in regard to the failure of respondent No. 2 to comply with the provisions of S. 25F(c) of the Act and that has not been considered by respondent No. 1 while refusing to make a reference in the present case. Section 25F(c) provides that no workman to which the said provision applies shall be retrenched by the employer until notice in the prescribed manner is served on the appropriate Government. It is common ground that notice had not been served by respondent No. 2 on respondent No. 1 as required by s. 25F(c) prior to the termination of services of appellants 2 & 3;

and the argument is that the reasons mentioned by respondent No. 1 in its communication to appellant No. 1 indicating its refusal to make a reference, show that this aspect of the matter has not been considered by respondent No. 1 and that, it is urged, in- troduces a serious infirmity in the said reasons and calls for ,a writ of mandamus requiring respondent No. 1 to rectify the said omission. There is no substance in this argument. It appears that the Rules framed by respondent No. 1 under the Act indicate that respondent No. 1 has construed the provision of s. 25F(c) as being directory and not as constituting a condition precedent for the validity of retrenchment under s. 25F. Rule 80 of the said Rules clearly Shows that where the employer has retrenched the employee by offering to pay him the requisite amount of remuneration in lieu of notice prescribed by s. 25F(a), the employer is required to serve the notice of the -,aid retrenchment within seven days of the date of retrenchment, and that means that in such a case, the notice has not to be served on the Government before retrenchment is effected. In other words, R. 80, it is conceded, treats the notice prescribed by s. s 25F(c) as condition subsequent and not a condition precedent. In view of the Rule framed by itself respondent No. 1 must not have thought it necessary to make any reference to -the argument urged by the appellants that respondent No. 2's failure to serve a notice on respondent No. 1 before retrenchment was effected introduced an infirmity in the order ;of retrenchment. Rule 80 framed by respondent No. 1 was itself an answer to the said plea, and so, respondent No. 1 -may well have thought that it was unnecessary to give that reason in its communication to the appellants.

Besides, in dealing with this contention, it is necessary to remember that in entertaining an application for a writ of mandamus against an order made by the appropriate Government under s. 10(1) read with s. 12(5), the Court is not sitting in appeal over the order and is not entitled to ,consider the propriety or the satisfactory character of the reasons given by the said Government. It would be idle to suggest that in giving reasons to a party for refusing to make a reference under s. 12(5), the appropriate Government has to write an elaborate order indicating exhaustively -all the reasons that weighed in its mind in refusing to make -a reference. It is no doubt desirable that the party concern- ed should be told clearly and precisely the reasons why no reference is made, because the object of s. 12(5) appears to be to require the appropriate Government to state, its reasons for refusing to make a reference, so that the reasons. should stand public scrutiny; but that does not mean that a party challenging the validity of the Government's decision not to make a reference can require the Court in writ proceedings to examine the propriety or correctness of the said reasons. If it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign, that no doubt, may justify the claim for a writ of mandamus. But the argument that of the pleas raised by the appellants two have been considered and not the third, would not necessarily entitle the party to claim a writ under Art.

226. That takes us to the main point which has been strenuously argued before us by Mr. Bishan Narain with regard to the construction of s. 25F(c). His contention is that just as s. 25F(a) and (b) are both mandatory and constitute conditions precedent for valid retrenchment, so is s. 25F(c) mandatory and a condition precedent. The prohibition contained in s. 25F is put in the negative form and it is coupled with the condition that no retrenchment can be effected until the three conditions specified by clauses

(a),. (b) and (c) are satisfied. The negative form adopted by the provision coupled with the use of the word "until" which introduces the three conditions, indicates that the conditions must be first satisfied before retrenchment can be validly effected. In this connection, Mr. Bishan Narain has referred to the decision of this Court in the State of Bombay & Others v. The Hospital Mazdoor Sabha & Ors. (1) where it has been held that the requirement prescribed by s. 25F(b) is mandatory and has to be complied with before an industrial employee can be retrenched. Dealing with s. 25F(b), it was observed in that judgment that clauses (a) and (c) of the said section prescribed similar conditions, though it was expressly added that the Court was then not concerned to construe them. Mr. Bishan Narain has also invited our attention to the fact that in Tea Districts Labour Association, Calcutta v. Ex-Employees of Tea Districts (1) [1960] 2 S.C.R. 866.

Labour Association and Anr.(1), it was conceded that the requirement as to notice prescribed by s. 25F(c) was mandatory and amounted to a condition precedent. Likewise, it appears that in the case of The Workmen of Subong Tea Estate v. The Outgoing Management of Subong Tea Estate & Anr. (2) recently decided by this Court, it has been incidentally stated that the three conditions prescribed by clauses (a), (b) and (c) of s. 25F appear prima facie to constitute conditions precedent before an industrial workman can be validly retrenched. In that case, no question arose about the construction and effect of the provisions of s. 25F and the observations are clearly in the nature of obiter observations and even then they indicate that the Court thought that prima facie the three conditions may be similar. No decision of this Court has been cited before us where this question has been directly considered and de- cided.

Mr. Bishan Narain, however, urges, and with some force, that the nomal rule of construction requires that if clauses (a) and (b) of s. 25F constitute conditions precedent, clause

(c) in the context must also receive the same construction. Prima facie, this argument is no doubt attractive; but a closer examination of the section shows that clause(c) of s. 25F cannot receive the same construction as clauses (a) and

(b) of s. 25F. Section 25F(a) requires that the workman has to be given one month's notice in writing. indicating the reasons for retrenchment, and the period of notice has to expire before the retrenchment takes place. It also provides that the workman can be paid in lieu of such notice wages for the said period. It is the latter provision of clause (a) which requires careful consideration in dealing with the character of the requirement prescribed by s. 25F(c). This latter provision allows the employer to re- trench the workman on paying him his wages in lieu of notice for one month prescribed by the earlier part of clause (a), and that means that if the employer decides to retrench a workman, he need not give one month's notice in writing and wait for the expiration of the said period before he (1) [1960] 3 S.C.R. 207.

(2) (1964 1 L.L.J. 333).

retrenches him; he can proceed to retrench him straightaway on paying him his wages in lieu of the said notice. Take a case where retrenchment is effected under this latter provision of clause (a); how would the requirement of clause

(c) operate in such a case? If it is held that the notice in the prescribed manner has to be served by the employer on the appropriate Government before retrenching the employee in such a case, it would mean that even in a case where retrenchment is effected on payment of wages in lieu of notice it cannot be valid unless the requisite notice is served on the appropriate Government; and that does not appear to be logical or reasonable. Reading the latter part of clause (a) and clause (c) together, it seems to follow that in cases falling under the latter part of cl. (a) the notice prescribed by cl. (c) has to be given not before retrenchment, but after retrenchment; otherwise the option given to the employer to bring about immediate retrenchment of the workman on paying him wages in lieu of notice would be rendered nugatory. Therefore, it seems that clause (c) cannot be held to be a condition precedent even though it has been included under s. 25F along with clauses (a) and'(b) which prescribe conditions precedent.The argument based on the negative form in which the provision is enacted and the use, of the word "until" no doubt are in favour of the appellant's contention, but the context seems to require a different treatment to the provision contained in clause

(c). Besides, the requirement introduced by the use of the word "until" is complied with even on the view we are inclined to take about the nature of the condition prescribed by clause (c), because after the retrenchment is effected, the employer has to comply with the condition of giving notice about the said retrenchment to the appropriate Government, and that is where the provision in clause (c) that the notice has to be served in +,he prescribed manner assumes significance. Rules have been framed by the Central Government and the State Governments in respect of this notice and, stated broadly, it does appear that these Rules do not require a notice to be served in every case before retrenchment is effected. In regard to retrenchment effected on paying the workman his wages in lieu of notice, the Rules seem to provide that the notice in that behalf should be served within the specified period prescribed by them; that is to say, under the Rules, notice in such a case has to be served not before the retrenchment, but after the retrenchment within the specified period. Mr. Bishan Narain no doubt contends that if his construction of s. 25F(c) is correct, the Rules would be invalid and that is true; but on the view we are inclined to take, the Rules framed by the Government appear to be consistent with the policy underlying the provision prescribed by s. 25F(c). We are, therefore, satisfied that s. 25F(c) cannot be said to constitute a condition precedent which has to be fulfilled before retrenchment can be validly effected. In this connection, there is one more consideration which is relevant. We have already seen the requirement of s. 25F(a). There is a proviso to s: 25F(a) which lays down that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services. Clause (a) of s. 25F, therefore, affords a safeguard in the interests of the retrenched em- ployee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before ,he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of service, or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman; he must be given one month's notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause (b). The object which the Legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workman can be retrenched. The hardship

resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause

(c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and 134-159 S.C.-3.

that only helps the Government to keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) & (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) & (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) & (b), is not a condition precedent.

There is one more point which ought to be mentioned before we part with this appeal. Even if we had held that s. 25F(c) constitutes a condition precedent, it would not have been easy to accept Mr. Bishan Narain's contention that a writ of mandamus should be issued against respondent No. 1. A writ of mandamus could be validly issued in such a case if it was established that it was the duty and the obligation of respondent No. 1 to refer for adjudication an industrial dispute where the employee contends that the retrenchment effected by the employer contravenes the provisions of s. 25F(c). Can it be said that the appropriate Government is bound to refer an industrial dispute even though one of the points raised in the dispute is in regard to the contravention of a mandatory provision of the Act? In our opinion, the answer to this question cannot be in the affirmative. Even if the employer retrenches the workman contrary to the provisions of s. 25F(c), it does not follow that a dispute resulting from such retrenchment must neces- sarily be referred for industrialist adjudication. The breach of section 25F is no doubt a serious matter and normally the appropriate Government would refer a dispute of this kind for industrial adjudication; but the provision contained in s. 10(1) read with s. 12(5) clearly shows that even where a breach of s. 25F is alleged, the appropriate Government may have to consider the expediency of making a reference and if after considering all the relevant fact the appropriate Government comes to the conclusion that it would be inexpedient to make the reference, it would 'be competent to it to refuse to make such a reference. We ought to add that when we are discussing this legal position, we are necessarily assuming that the appropriate Government acts honestly and bona fide. If the appropriate Government refuses to make a reference for irrelevant considerations, or on extraneous grounds, or acts mala fide, that, of course, would be another matter; in such a case a party would be entitled to move the High Court for a writ of mandamus.

The result is, the appeal fails and is dismissed. There would be no order as to costs.

Appeal dismissed.