The Indian Bank Ltd. Vs. the Industrial Tribunal and ors.

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Court : Chennai

Decided On : Jan-18-1963

Reported in : AIR1963Mad471; [1963(7)FLR70]; (1963)IILLJ195Mad; (1963)2MLJ6

Judge : S. Ramachandra Iyer, C.J. and ;Venkataraman, J.

Acts : Industrial Disputes Act, 1947 - Sections 10, 10(1A) and 10(6); Banking Companies Act - Sections 34A

Appeal No. : Writ Appeal No. 22 of 1961

Appellant : The Indian Bank Ltd.

Respondent : The Industrial Tribunal and ors.

Advocate for Def. : Addl. Govt. Pleader, ;P.J. Sethuraman, ;Row and Reddy, Advs.

Advocate for Pet/Ap. : R.M. Seshadri and ;R. Lakhappa Rai, Advs.

Disposition : Appeal dismissed

Judgement :

S. Ramachandra Iyer, C. J.

1. This appeal filed under Clause (15) of the Letters Patent arises from the judgment of Ramakrishnan, J. who declined to issue a writ of prohibition which was sought for restraining the Industrial Tribunal at Madras from proceeding with a reference made by the Government of India under Section 10 of the Industrial Disputes Act concerning the quantum of bonus payable by the appellant bank to its employees for the year 1957.

2. The facts leading upto the reference are these. The employees of the India Bank Ltd. being dissatisfied with the response of the Management to their demand for bonus for the year 1957 went on strike. Negotiations for calling off the strike ensued and as a result of an agreement come to between the parties the Government of India was approached by the appellant bank as well as its employees to refer the following question for adjudication by the Industrial Tribunal at Madras :

'What should be the quantum of bonus payable to the workmen for the year 1957?'

The Central Government acceded to the request and directed a reference by its order dated 18-2-1960.

3. The question of bonus payable to bank employees, particularly the matter of having a general scheme which would provide a permanent formula for computation of bonus had been a matter of dispute between several banks in the country and their employees. A brief reference to it has become necessary to appreciate the contention now raised in this appeal.

4. In the year 1949 the Government of India constituted a Tribunal with Mr. K.C. Sen, retired judge of the Bombay High Court as its president to decide certain industrial disputes. About 205 banks were concerned in the reference. One of the questions referred to the tribunal for adjudication was 'bonus including qualifications or eligibility and method of payments'. The award of the Tribunal evolved a formula for fixing the bonus payable to employees of banks. But that award was set aside by the Supreme Court on account of the defect in the constitution of the Tribunal which rendered its proceedings invalid. The judgment of the Supreme Court is reported in United Commercial Bank Ltd. v. Their workmen, : (1951)ILLJ621SC .

5. Shortly after the judgment of the Supreme Court, the Central Government constituted another tribunal with the late Sri S. Panchapagesa Sastri, who had by then retired from the Bench of this Court, as its president, and among the disputes referred to that tribunal was one relating to bonus. The question relating to bonus was regarded by the tribunal, and his view was upheld by the Supreme Court when the matter came up ultimately before it, as a scheme for the future. The Sastri tribunal felt that the quantum of bonus could only be fixed with respect to each individual bank and not generally with respect to the entire class of banks as such. If recognised that several safeguards were necessary in the shape of creation of reserves for various purposes and that they could not properly be taken into account in calculating the bonus payable to the workers.

The majority of the tribunal, the president dissenting, held that Section 10 of the Banking Companies Act, 1949 as it stood then would stand in the way of the grant of bonus to bank employees. In the light of the findings arrived at, the tribunal while hot giving any binding award on the bonus to be paid, suggested a scheme for acceptance by the management of the banks and their employees. There was an appeal from the award to the Labour Appellate Tribunal which was then functioning. The Appellate Tribunal took a different view on most of the questions adjudicated upon by the Sastri Tribunal. It was of opinion that the question referred to the tribunal comprehended not merely the general question of the principles on which the bonus should be calculated but also the particular dispute which the respective workers had with the banks in which they were employed.

It inter alia held that Section 10 of the Banking; Companies Act would not preclude the payment of bonus, to the bank employees. It also held that in determining the quantum the formula adopted in other industries for payment of bonus to the workers as laid down in Mill-owners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh, 1950 II LLJ 1247 , (Tribunal at Bom.) would apply. Certain of the banks filed appeals to the Supreme Court against the decision of the Labour Appellate Tribunal. During the pendency of the appeals, Section 10 of the Banking Companies Act was amended so as to make it clear that it would be lawful to pay bonus to employees of banks. The Supreme Court did 'not accept the view of the Appellate tribunal. It held that the reference to the tribunal did not include within its scope, claims for bonus for particular years in respect of particular banks; but that it was concerned only with the general question as to whether the bonus was payable to bank employees and if

so, the qualifications or eligibility and method of payment of the same. There were still two other matters in controversy before the Supreme Court, namely, whether the formula of the Full Bench of the Labour Appellate Tribunal could be applied without modification to all banks, and whether it would be competent for the Industrial Tribunal to compel the banks to disclose its secret reserves. But a decision of these questions was considered unnecessary. The judgment of the Supreme Court is reported in Central Bank of India v. Their Workmen, : [1960]1SCR200 .

6. The position then was that the disputes between the management and the employees of banks in regard to the formulation of schemes for determination of bonus payable to the latter, remained unsettled. There was a sharp divergence of approach between the employees and their respective managements both with regard to the principles as well as the quantum of the bonus to be paid every year. Nearly 73 banks spread over the entire country of whom the appellant was one, had such disputes with their employees. By an order dated 22nd September 1960 the Government of India made a reference under Section 10(1)(A) of the Industrial Disputes Act to a National Tribunal for adjudication of the following question:

'Bonus--principles and conditions under which payable, qualification for eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by banks.'

Sri Justice K.T. Desai now Chief Justice of the High Court of Gujarat, was appointed as presiding officer of the Tribunal. It will be seen that the subject-matter of reference to the National Tribunal is almost identical with those before the Sen Tribunal as well as the Sastri Tribunal; only the reference has been made more specific of what was implicit in the earlier reference in the matter of exclusion from computation for purposes of bonus certain secret reserves which banks were accustomed to make. The Desai Tribunal delivered an exhaustive award settling the principles on which bonus should be given to employees of banks. That award was delivered in July 1962.

We are not however concerned now with the question how far that award would govern the present case, On behalf of the appellant it is contended that it would operate even retrospectively. On the other hand it is contended on behalf of the employees that the award will have application only for the future and that bonus in regard to the past years should be determined by reference to the principles laid down in the Sastri award. That matter however, is not relevant for the present appeal, but will have to be decided by the Industrial Tribunal at Madras if and when this case goes back to it for adjudication.

7. It will be seen from what we have stated above that the Industrial dispute which forms the subject matter of this appeal concerns a single bank and its employees, the dispute itself arising in the context of and as a part of the arrangement to put an end to a strike staged by the employees. The form of the question suggests that it is confined only to the determination of the quantum of bonus payable by the management to its employees and that for the particular year, 1957. On the other hand the question that was referred for adjudication to the National Tribunal is concerned with the principles on which bonus had got to be calculated, that is practically for a formulation of a scheme for all time.

Several banks of whom the Indian Bank Ltd.., Madras, was one, were parties to the

reference. Although at the time when the disputes were taken cognizance of by the Central Government, there was a claim for payment of bonus on the part of the employees of banks, the Government significantly enough did not refer any question in regard to the quantum. On the other hand, they were content to refer the general question alone viz., that in regard to the formulation of theprinciples. Presumably the Government thought that once the principles were settled, the further disputes as to computation of bonus could more appropriately be left to the Industrial Tribunals functioning in the various States and not to the National Tribunal.

The question of quantum for the year 1957 so far as the Indian Bank Ltd. is concerned was the subject matter of an earlier reference by the Central Government to the Industrial Tribunal at Madras. Disputes between it and its employees had come to a head by the strike. Both the management and the employees had agreed and requested the Government to refer the matter for adjudication to the Industrial Tribunal, But surprisingly enough the appellant bank which was a party to that agreement took up an objection before the Industrial Tribunal at Madras when the matter came up for hearing that the Tribunal had ceased to have jurisdiction over the dispute referred to it the moment the Government had constituted a National Tribunal and referred to it a dispute which according to it was wide enough to cover the particular dispute that had been referred to the local tribunal. Support for the contention has been sought in the terms of Section 10(6) of the Industrial Disputes Act which runs :

'Where any reference has been made under Sub-section (1-A) to a National Tribunal, then notwithstanding anything contained in this Act, no labour Court or tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly--(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before Labour Court, or the Tribunal, the proceeding before the Labour Court or the tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National tribunal.'

(Rest of the section omitted as unnecessary).

The objection before the Tribunal was that the principles which regulate the computation of bonus torsued (sic) an integral part of the question actually referred in the present case and that as the former aspect of the question was the subject matter of reference to the National Tribunal, the provisions of Sub-section 6 referred to above would preclude the local Tribunal from dealing with the reference. The Industrial Tribunal overruled the objection. Its view has been accepted in this Court by Ramakrishnan, J. who was moved! under Article 226 of the Constitution to issue a writ of prohibition so as to restrain the Tribunal from proceeding further with the reference. Hence this appeal.

8. The substantial contention of Mr. R.M. Seshadri on behalf of the appellant is there could be no award of bonus for any particular year without laying down first the principle on which such bonus should be computed. The essential matter for determination of the Tribunal would according to the argument, therefore, be only the principles that would be applicable to banking companies, and as that question had been specifically made the subject matter of reference before the National Tribunal, the proceedings before the Industrial tribunal at Madras should be deemed to have been quashed vi statui. Dealing with that argument the Industrial Tribunal

said:

'It is true that in the adjudication of the present reference, namely, the fixation of the quantum of bonus for the year 1957, this Tribunal willhave to decide the principles applicable to banking companies and possibly also other questions before it can proceed to determine the quantum of bonus payable to the workers for the year in question. Nevertheless, those questions are not the matter for adjudication in this reference. The real matter for adjudication in this reference is the specific question of bonus for the year 1957, and not any other question; whereas the matter for adjudication for the National Tribunal is the question of the settlement of the general principles and conditions under which the bonus is payable.'

We are in agreement with this view and our reasons are as follows.

9. The soundness of the objection to the jurisdiction of the Industrial Tribunal to entertain the reference in the present case depends on the true construction of Section 10(6). If it were to be held that the matter for adjudication before the National Tribunal is the same as the one before the Industrial Tribunal at Madras, the reference to the latter albeit it was made earlier, can be quashed. The determination of that question depends on the meaning to be given to the words 'matter in adjudication.' These words, in our opinion, can only refer to the substantive question for determination of the Tribunal. It cannot obviously refer to every step or decision come to with a view to arrive at the final adjudication. Preliminary, collateral or incidental matters which may be necessary to be decided before adjudicating the actual question referred to, cannot be regarded as a matter for adjudication. The adjudication contemplated by Section 10 is of a dispute and it follows that for the purpose of applying Clause (6) of Section 10, the dispute pending before the Industrial Tribunal and that before the National Tribunal should be the same., so that the concerned workers may obtain the relief sought in the local Tribunal from the National Tribunal. Unless there is therefore an identity between the two references one cannot replace or supersede the other. It is however argued that the reference as to quantum of bonus payable could imply a reference to the determination of the principles which would guide the determination of the bonus, or at any rate, the latter question will be so much mixed up with the quantum that they cannot be split up.

10. There is a misapprehension in the argument. The mere fact that for an effective adjudication of the question actually referred to in the present case, a determination of the principles on which the bonus should be paid is essential, cannot make the latter question a 'matter in adjudication.' It is true that for the fixation of the quantum of bonus for the year 1957 an ascertainment of the principles on which such bonus has to be fixed will be necessary. But that does not mean that the ascertainment of the principles is the essential matter for adjudication. At best it can only be part of the process of judicial mind before the ultimate decision is arrived at. In our opinion for Section 10(6) to apply there should be an identity of the subject matter in the two references. Such identity may exist in one of two ways : (1) the entire question referred to the Industrial Tribunal might form the subject matter of reference to the National Tribunal: (2) the question referred to the Industrial Tribunal might be one of the several questions which had been referred to the National Tribunal. In all such cases reference to the Industrial Tribunal will stand quashed on the National Tribunal seizing of its reference; then the National Tribunal would be competent to afford relief to the parties on thequestion which had been referred to the IndustrialTribunal.

Secondly, where there are several questions referred to the industrial Tribunal and one of them is later referred to the National, the former will cease to have jurisdiction over that question alone which has been referred to the latter. In either case there should be an identity of the question referred to the Industrial Tribunal and that referred to the National Tribunal. In terms Section 10(6) has the effect of nullifying only such part of the proceeding before the Industrial Tribunal as is covered by the reference to the National Tribunal. If the contentions on behalf of the appellant were to be accepted, namely, that the reference in the instant case should be regarded as a combined one to settle the principles of bonus payable and then to fix the quantum the result would be that the Industrial Tribunal will be incompetent to decide the questions of the principle but yet be bound to decide the question of quantum an absurdity which cannot be attributed to the legislature on any sound rule of construction.

Our opinion therefore is that for Section 10(6) to apply, the subject matter of the reference to the Industrial Tribunal and the National Tribunal should cover the same field and the latter should be capable of giving relief on the question referred to (he. Industrial Tribunal.

10A. It is then contended that as Section 10(1)(A) which empowers, the Central Government to make a reference to the National Tribunal authorises in such reference to refer not merely the dispute but also any matter appearing to be connected with or relevant to the dispute, the construction to be placed on Clause (6) will be that the Industrial Tribunal will be precluded from exercising its jurisdiction not merely in regard to the matter which had been superseded by reference to the National Tribunal but all those matters which are connected with or relevant to the dispute so referred. We are unable to appreciate this argument. Section 10(1)(A) confers an authority to the Government. It empowers a reference not merely of the question in dispute but other related matters. Section 10(6) will come into play only if there has been a reference. Thus if related matters have not been actually referred for adjudication by the National Tribunal there will be no scope for the application of Section 10(6) to matters not so referred.

11. Mr. R.M. Seshadri then contended that before there could be a determination of the bonus for the year 1957, the Industrial Tribunal will have to consider how far the Full Bench formula as laid down in 1950 II L. L. J. 1247 (Tribunal at Bom) could be made applicable to banking companies, particularly in regard to the question whether the secret reserves of the bank should be disclosed and be made available for computation of bonus or not. At an earlier stage of this dispute there was controversy between the parties that the Tribunal would have no power to call upon the Bank to disclose the reserves set apart by it for certain purposes. That order came up for consideration before one of us in W. P. No. 362 of 1960. Quashing the same it was observed,

'Before there could be an order for inspection it has first to be ascertained whether the Full Bench formula would apply to the case of the banking company, and if the formula is held not applicable to it, whether working any formula evolved for it would be necessary to know the amount set apart or provisions made (for secret reserves).'

On the strength of these observations it is argued that the question of eliminating secret reserves from consideration for determining the actual bonus payable is now before the Industrial Tribunal and as that question was specifically included in the

reference to the National Tribunal an integral and indivisible part of the reference will be hit by Section 10(6) and that will demand the quashing of the reference.

12. In order to deal with this argument it is necessary to digress a little to the Full Bench formula referred to above in the matter of calculation of bonus for workers in banking companies. The question as to the method of computation and fixation of -the quantum of bonus came up to the forefront in several industries. In 1950 II LLJ 247, a Full Bench of the Labour Appellate Tribunal evolved a formula. Under that formula it was recognised that the payment of bonus would be dependent on profits made in a particular year, After ascertaining the profits, deductions were allowed to be made for prior charges, for depreciation, income tax, return on paid up capital, return on reserves used as working capital, for rehabilitation, replacement, modernisation etc. After making these deductions at the rate specified in the formula, the net surplus which was described as available surplus, formed the basis for bonus calculation which was done with due regard to the claims of the share-holders and the workmen.

The Supreme Court has accepted the soundness of the formula in more than one case as being based on consideration of social justice satisfying at once the legitimate claims of both the capital and the labour in respect of profits made by the industry in the particular year (Vide The Associated Cement Companies Ltd. v. Its workmen, : (1959)ILLJ644SC , The Standard Vacuum Refining Co. of India v. Its Workmen, : (1961)ILLJ227SC . These cases related to industries other than banking concerns which had its own peculiar problems where provisions and reserves have to be made to secure stability of the institution and absorb shocks occasioned by periodic economic depressions. The question whether the Full Bench formula could be applied to banking companies as well has been the subject-matter of much divergence of opinion. Parliament has however solved the problem by enacting Section 34-A of the Banking Companies Act, preventing the disclosure of reserves not shown in its published balance-sheets. To avoid banks secreting more than the legitimate portion of their profits to its secret reserves with a view to defeat the claim to bonus on the part of its workers, Parliament has provided in Section 34-A(2) that the matter can be referred to the Reserve Bank who after taking into account the principles of sound banking and other relevant circumstances is required to furnish a certificate whether any and it so what part of the amount could be made available for bonus contribution. The validity of this enactment has been upheld by the Supreme Court in All India Bank Employees Association v. National Industrial Tribunal, : (1961)IILLJ385SC . After the enactment of Section 34A of the Banking Companies Act, the question reserved for determination by this Court in W. P. No. 362 of 1960 has become of little importance as the statute, the Banking Companies Act, has provided the machinery for determination as to how much of the secret reserves of the Bank could be made available for the computation of the available assets. There is therefore no longer any necessity for the Industrial Tribunal to go into thequestion whether in regard to a bank secret reserves should be taken into account or not.

13. From what we have stated above, it will be clear that the question that has been referred to the Industrial Tribunal at Madras in the present case is different from the question that was referred to the National Tribunal by the Central Government, The latter was in form and substance identical with the reference made to the Sen Tribunal, as well as to the Sastri Tribunal. In the latter case the Supreme Court expressly held that the reference on the question of bonus was of a dispute of a general nature which did not include payments for bonus for particular years in respect of particular banks. It will be interesting to note that in the award passed by

Mr. Justice K.T. Desai, a copy of which has been made available to us, it was recognised that the question referred to it was essentially different from the question relating to the quantum of bonus (vide paragraph 59 of the award) for any year. It is needless to add that if the two references are distinct, the one made to the National Tribunal will not have the effect of superseding the one made to the Industrial Tribunal.

14. It is then contended by Mr. R.M. Seshadri that the dispute which was brought to the notice of the Central Government before it made a reference to the National Tribunal comprised not merely the settlement of a scheme for payment of bonus but also the quantum with respect to each of the banks, for several years including the year 1957. Under those circumstances it is contended that it will be the duty of the Government to refer the question to the fixation of bonus in individual cases too on receipt of the award by the National Tribunal, Therefore the remedy of the employees will be to await such action as the Government may take by way of implementing the award of the National Tribunal and not to proceed with the present reference. We see no force in the contention. It may be that after the settlement of the principles by the National Tribunal, the banks may pay bonus in accordance therewith and there may be no occasion for any dispute or reference of any existing or future dispute. Even otherwise, a reference once made to the Industrial Tribunal, as in the instant case, cannot be made to depend for its continuance on the discretion of the Government to refer the same dispute subsequently to it or the National Tribunal. It has been held by a Bench of this Court recently that once a reference under Section 10 has been made to the Industrial Tribunal it will not be competent to the Government to withdraw the same either expressly or impliedly. The Tribunal, which is seized of the matter, will therefore have to adjudicate on the question referred. To accept the argument of Mr. Seshadri will be to practically quash the reference without the Government being obliged in any way to refer the matter again for adjudication by the appropriate tribunal. We are, therefore, in agreement with Ramakrishnan J. that the reference to the Industrial Tribunal in the instant case has not been superseded by the reference to the National Tribunal by the order of the Government dated 22nd September 1960.

15. This appeal fails and is dismissed with costs.