

Mettur Chemical and Industrial Corporation Ltd. Vs. their Workers

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Court : Chennai

Decided On : Oct-13-1954

Reported in : (1955)ILLJ27Mad

Judge : Rajagopalan, J.

Appellant : Mettur Chemical and Industrial Corporation Ltd.

Respondent : their Workers

Judgement :

ORDER

Rajagopalan, J.

1. On 20 March 1964 in exercise of the powers conferred on the Government of Madras by Section 10(1)(c) of the industrial Disputes Act (XIV of 1947), the Government referred for adjudication to the industrial tribunal, Coimbatore, disputes between the management and the workers of Mettur Chemicals and industrial Corporation. The claims of the workers' for additional bonus and additional dearness allowance formed the subject-matter of the disputes. In due course the management and the workers' union filed their statements before industrial tribunal. On 11 May 1954 the management filed a list of the witnesses it desired to examine during the enquiry as also a list of documents, copies of these documents were also filed which included balance sheets of the company for each of the years ending 31 March 1950, 1951, 1952 and 1953, abstracts of the company's accounts under five heads were also furnished for the years 1950-51, 1951-52 and 1952-53, (1) details for raw materials consumed, electric energy, etc., (2) details for packing charges, (3) details for transport charges, (4) details for management expenses, and (5) details for sales less commission.

2. Copies of these lists and documents were also furnished by the management to the workers' union. On 17 May 1954 the workers' union submitted an application to the industrial tribunal the relevant portion of which ran:

The Mettur Chemical Workers' Union submits that it does not accept the genuineness and accuracy of the figures relating to profits, depreciation, management expenses, packing and transport charges, consumption of raw materials and the item of salaries and commissions. A copy of the manufacturing and the trading account is also necessary.

The union therefore feels it very necessary that it should be given permission to inspect and verify from the relevant books and records the expenses incurred under

the above heads.

3. The tribunal overruled the objections of the management and ordered on 8 July 1952:

Even after perusing the counter-statement filed by the management the tribunal is of opinion that the company should furnish inspection of the account books showing the figures relating to profits, depreciation, management expenses, packing and transport charges, consumption of raw materials and items of salaries and commission.

[Paragraph 2 omitted.]

4. The management applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the tribunal dated 8 July 1954.

5. Though the contention the petitioner put forward in the affidavit in support of his petition for the issue of a writ of certiorari was that the industrial tribunal had no jurisdiction at all to order inspection of the accounts mentioned in the order, dated 8 July 1954, the scope of the argument before me was narrower: did the industrial tribunal act in excess of its jurisdiction in passing the order dated 8 July 1954?

6. Section 11(3) of the industrial Disputes Act, 1947, runs:

Every tribunal shall have the same powers as are vested in a civil court under the Civil Procedure Code, 1908, when trying a suit in respect of the following matters, namely.

(a) discovery and inspection..

7. The relevant provisions of the Civil Procedure Code, 1908, which define the powers of civil courts and regulate their exercise in relation to discovery production and inspection are Section 30 of the Code and the rules in Order XI. Section 30 runs:

Subject to such conditions and limitations as may be prescribed, the court may at any time either of its own motion or on the application of any party-

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering¹ of interrogatories, admission of documents and facts and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence..

The power conferred by Section 30 is subjected by that section itself to 'such conditions and limitations as may be prescribed.' The rules in Order XI, C.P.C., prescribe certain conditions and limitations subject to which a civil court has to exercise the power conferred on it by Section 30, C.P.C. Rules 1 to 11 of Order XI deal with interrogatories. Rules 12 and 13 deal with discovery of documents. Rule 14 deals with productions of documents. What I am concerned with in this case is the limits if any on the powers of an industrial tribunal to order inspection of documents. The analogous powers of a civil court under this head have been dealt with in Rules 15 to 19 of Order XI, C.P.C. and Rule 18 defined the right of a party to claim inspection. Of these Rule 15 provides for the exercise of the power of the court to enforce that right.

Order XI, Rule 15, runs:

(b) compelling production of documents, and material objects;

(d) in respect of such other matters as may be prescribed.

8. Rule 21 of the industrial Disputes (Central) Rules, 1947, framed by the Central Government in exercise of the powers conferred on it by Section 38 of the industrial Disputes Act, 1947, runs:

Power of boards, courts and tribunals: in addition to the powers conferred by Sub-section 3 of Section 11 of the Act, boards, courts and tribunals shall have the same powers as are vested in a civil court under the Civil Procedure Code, 1908, when trying a suit in respect of the following matters, namely:

every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the court shall deem sufficient for not complying with such notice, in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court shall think fit.

Rule 18(1):

Where the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit : provided that the order shall not be made when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents except such as are referred to in the pleadings, particulars or affidavits the party against whom the application is made or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court shall not make such order for inspection of such documents when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

9. The combined effect of Section 11(3) of the industrial Disputes Act, 1947, and Rule 21 of the rules framed thereunder is to vest in the industrial tribunal with reference to discovery, production and inspection of documents the same powers which the Civil Procedure Code vests in a civil court when it tries civil suits. It is true that neither Section 11 of the industrial Disputes Act, nor Rule 21 specifically provides for the application of all provisions of the Civil Procedure Code governing the discovery, production and inspection of documents. All the same, in considering what are the powers of an industrial tribunal to order inspection of documents (I shall confine

myself only to that question) the deciding factor should be what are the powers of a civil court to order inspection? it is not an unlimited power or rather a power the exercise of which is limited only by the discretion of the judge, that even Section 30, C.P.C., confers on a civil court. The power conferred by Section 30, C.P.C., is specifically subjected to the 'limitations and conditions as may be prescribed,' that is, the conditions and limitations prescribed for instance by the relevant rules in Order XI, C.P.C. The learned Counsel for the respondent workers' union, abandoned soon the extreme contention he advanced at one stage that the industrial tribunal had jurisdiction to permit inspection of any document without any reference to Rule 15 or Rule 18 of Order XI, C.P.C., whether the document was referred to or not in the pleadings and even whether it was relevant or not to any of the questions at issue. The modified claim the learned Counsel preferred was that the industrial tribunal was clothed with power to order inspection of documents after taking into consideration the circumstances of each case but that it was not necessary to conform to any of the provisions of the Civil Procedure Code. Even that contention I am unable to accept. It was an acceptable contention that Mr. Mohan Kumaramangalam urged that though the industrial tribunal was not bound by all the rules of Order XI, C.P.C. as such, the industrial tribunal must conform to the general principles that underlay the provisions in Order XI, C.P.C., governing the inspection of documents. The real test in deciding in any given case whether the industrial tribunal exceeded its jurisdiction in directing inspection is, had such an order been passed by a civil court trying a suit, would that order have been within the strict limits of its jurisdiction? Such a question must necessarily be answered in relation to a civil court with reference to Rules 15 and 18 of Order XI, C.P.C. These limitations also circumscribe the power of an industrial tribunal.

10. Order XI, Rule 15, C.P.C. gives the right to the party to seek inspection. But that right is confined to the documents referred to in the pleadings or affidavits of the party against whom that right can be claimed. Rule 18(1) of Order XI, C.P.C. empowers the court to order inspection of the documents referred to in Rule 15, that is, the documents referred to in the pleadings or affidavits. Rule 18(2) of Order XI, C.P.C. provides for documents other than those referred to in Rule 15 inspection of which a court is empowered to order. The conditions to be satisfied before the power under Rule 18(2) of Order XI, C.P.C., can be exercised are

- (1) There should be an affidavit to show the documents inspection of which is sought,
- (2) party who applied for the inspection of the documents should establish that he is entitled to inspect them, and
- (3) the documents inspection of which is sought must be in the possession of the party against whom the order for inspection is sought.

Overriding all these is the further requirement that the court should be of Opinion that the document inspection of which is sought is necessary either for disposing of fairly the suit or for saving costs. The need for establishing the third of these conditions should be obvious if the order for inspection is to be effective at all. Reference to Rule 19(3) of Order XI, C.P.C. should show that the question of possession could in proper cases be decided even after an inspection has been ordered. It also implied that it must be established that at Borne point of time at least either anterior to the application for inspection or subsequent to it. The party must have been in possession of the documents inspection of which is asked for. The

second requirement mentioned above that the party applying for inspection is entitled to inspect the documents appears to be a condition full proof of which the court must insist upon before ordering inspection of the documents that fall within the scope of Rule 18(2) of Order XI, C.P.C. whether the right to inspect claimed in a given case is to be held established or not must of course depend on the circumstances of that case and it is neither desirable nor even possible to prepare so exhaustive list of cases that would amount to an established right. But unless the right is established, the court has no power to order inspection under the terms of Rule 18(2) of Order XI, C.P.C. The need for an affidavit may at first sight appear to be but a rule of procedure failure to conform to which may not affect the power of the court to order inspection. But when we examine the classes of documents excluded from the purview of Clause 2 of Rule 18 of Order XI, C.P.C. the need for an affidavit, before the court considers an application for inspection of the documents that do fall within the scope, of Rule 18(2), seems to be obvious. The excluded classes of documents are those referred to in the pleadings, particulars or affidavits, i.e., all of them are verified statements of claim. Insistence on affidavit in Rule 18(2), conforms to the general principles that underlies the provisions that govern inspection of documents. In my opinion both the conditions, (1) an affidavit to show the documents inspection of which is sought and (2) the party who applies for inspection should establish that he is entitled to inspect the documents, must be satisfied before the court can exercise its power to order inspection of the documents that fall within the scope of Clause 2 of Rule 18 of Order XI, C.P.C. The exercise of the power to order inspection before the applicant satisfies the conditions mentioned above would, with reference to the documents that come within the scope of Rule 18(2) of Order XI C.P.C., be a case of erroneous assumption of jurisdiction and not that of the exercise of the jurisdiction conferred on the court by Section 30, C.P.C. which jurisdiction in relation to these documents is controlled by Rule 18(2) of Order XI, C.P.C. which contain some of the prescribed conditions and limitations referred to in Section 30, C.P.C. It is a conditional power or jurisdiction that Section 30, C.P.C., confers and unless the conditions prescribed by Rule 18(2) of Order XI, C.P.C., are satisfied the power to order inspection of the documents referred in to Rule 18(2) does not spring into existence, The court or tribunal must apply its mind and satisfy itself that the limitations under which jurisdiction or power is exercisable are satisfied. If the court fails to appreciate and apply its mind to the preliminary questions it has to decide, it would amount to an erroneous assumption of jurisdiction. The jurisdictional facts must be established before the jurisdiction is assumed and the power exercised.

11. The ambit of the power of an industrial tribunal to order inspection of documents is no larger than that of a civil court. Section 11(3) of the Industrial Disputes Act, 1947, and Rule 21 already adverted to make that clear.

12. It is with reference to these principles I have to decide whether the order of the industrial tribunal, dated 8 July 1954, was with-in its jurisdiction.

13. The accounts of the management, inspection of which by the workers' union was ordered by the industrial tribunal were those showing (i) profits, (ii) depreciation, (iii) management expenses, (iv) packing and transport charges, (v) consumption of raw materials, (vi) salaries and (vii) commission. Of these with reference to items (iii), (iv) and (v) the management had filed abstracts of accounts and these and the accounts of which they were abstracts could possibly be held to fall within the scope of Rule 15 and Clause 1 of Rule 18 of Order XI, C.P.C. Inspection of the other documents could have been claimed by the workers' union and allowed by the

industrial tribunal only under the terms of Clause 2 of Rule 18 of Order XI, C.P.C. The industrial tribunal does not appear to have kept in mind the distinction between the requirements of Clause 1 and Clause 2 of Rule 18 of Order XI, C.P.C. No doubt the sufficiency of reasons if given by a subordinate tribunal will not be a matter for investigation by this court in proceedings under Article 326 of the Constitution. Nor can the failure of a subordinate tribunal to furnish reason by itself be sufficient in all cases to set aside the order of that subordinate tribunal. In the case of an industrial tribunal however it is certainly not unreasonable to expect a considered judicial order of 'speaking order' when a right is claimed and allowed despite the objections of the other party. It has now been authoritatively laid down by the Supreme Court that though an industrial tribunal is a quasi-judicial tribunal the functions it discharges are judicial functions. The strictly circumscribed standards of scrutiny which the court exercising revisional jurisdiction could apply to the judicial order of a civil court, could well apply to a judicial order of an industrial tribunal, when the jurisdiction of this Court is invoked either under Article 226 or under Article 227 of the Constitution. As I have already stated, there is nothing *ex facie* the order of the industrial tribunal to indicate that the tribunal was conscious that it was called upon to exercise a jurisdiction controlled by the principles embodied in Clause 2 of Rule 18 of Order XI, Civil Procedure Code.

14. On an examination of the records of the industrial tribunal placed before me it seems clear that with reference to the accounts and documents that could fall only within the scope of the second clause of Rule 18 of Order XI, C.P.C. Inspection was ordered by the industrial tribunal without investigating whether all the requirements of that rule of law were satisfied. The representative of the workers' union did not file any affidavit. He did not establish by affidavit or otherwise that the party to the dispute which he represented had a right to inspect these documents. That the documents were in the possession of the management was probably not in dispute. The tribunal was possibly of the view, though it did not expressly say so, that the denial of inspection of any class of documents was called for on the ground that it was not necessary either for disposing fairly of the suit (industrial dispute) or for saving costs.

15. The claim to inspect a named set of accounts is obviously by itself not proof of a right to inspect those accounts. What was the right claimed by the workers' union is never specified. The tribunal had no occasion to decide and did not decide whether any right had been established by the workers' union to inspect those accounts. That by itself should suffice to invalidate the order of the industrial tribunal. Sri Rajah Ayyar referred to the *King v. Merchant Tailors' Company* 109 E.R. 1086, *Bank of Bombay v. Sulaman Somaju* 32 Bom. 466 and *Lockett v. Lockett* 4 Ch. Ap. 336 to explain the scope of the right to be established before a party to a suit is allowed inspection of documents. What was in issue in the first two of these cases was a substantive right. They did not directly deal with the procedural law under which a right to inspect documents could be claimed by a party to a suit as incidental to the determination of the questions at issue in the suit itself. Besides, when the right to inspect the documents is to be held established to satisfy the requirements of Clause 2 of Rule 18 of Order XI, Civil Procedure Code, is a question that has to be determined with reference to the facts proved in that case, and in the present case what was the right the workers' union claimed it never explained, and the industrial tribunal never decided such an issue.

16. In addition to the abstracts of certain accounts filed by the management of its

own accord the right to inspect which stands on a different footing, the management filed copies of balance sheets of the company for four years, which disclosed among other items the total of profits, depreciation, etc. All that the workers' union had to say of these documents including the balance sheets was that it 'did not accept the genuineness and accuracy of the figures relating to profits, depreciation....' Whether such a general denial gave the workers' union the right to inspect all the accounts on which the balance sheets were based the industrial tribunal does not appear to have considered or decided. Sri Rajah Ayyar referred to Section 3(b) of the Commercial Documents Evidence Act XXX of 1939 and pointed out that the initial presumption was in favour of the genuineness of the balance sheet and of the accuracy of its contents. Section 3(b) runs:

For the purposes of the Indian Evidence Act, 1872, and notwithstanding anything contained therein, a court....

(b) may presume within the meaning of that Act in relation to documents included in part 11 of the schedule that any document purporting to be a document included in part 11 of the schedule and to have been duly made by or under the appropriate authority, was so made and that the statements contained therein are accurate.

Item 21 of part 11 runs:

Copy, certified by the Registrar of Companies, of the balance sheet, profit and loss account, and audit report of a company, filed with the said Registrar under the Indian Companies Act, 1913, and the rules made thereunder.

Sri Rajah Ayyar also referred to the relevant provision of the Indian Companies Act, particularly, Sections 132, 133 and 137, to emphasize the statutory duties imposed upon a company in the preparation of balance sheets and profits and loss accounts. He also referred to Section 145 of the Indian Companies Act and to Council of the institute of Chartered Accountants of India v. Hedge 1954 2 M.L.J. 302 to explain the responsibility of auditors who certify to the correctness of the balance sheets. An assertion that the workers' union did not accept the accuracy of such balance sheets and profits and loss accounts is certainly not proof of a right to inspect accounts of which those statements were passed.

17. One of the objections of the management to offering the representatives of the workers' union the inspection of accounts desired by them was that the management apprehended that the workers' union might make use of the information gained by such inspection for other purposes to harass the management. But if the right to inspect the accounts is established, such an apprehension even if well founded--and there was no evidence of that in this case--may not be enough to deny that right. Besides, Section 21 of the Industrial Disputes Act, 1947, is a statutory provision to ensure the secrecy of the information disclosed even to parties to an industrial dispute.

18. In my view, the industrial tribunal erroneously assumed a jurisdiction and exercised a power in excess of that conferred on it by Section 11(3) of the Industrial Disputes Act, 1947, and by Rule 21 of the rules framed thereunder when it ordered inspection of accounts of the management. That could fall only within the scope of Sub-clause 2 of Rule 18 of Order XI, Civil Procedure Code, before the workers' union had established its right to inspect those accounts.

19. Whether on that ground the order of the industrial tribunal, dated 8 July 1954, should be set aside by the issue of a writ of certiorari is the next question. Mahabaleswarappa v. Ramachandra Rao I.L.R. 1937 Mad. 132 should suffice to answer that question in the affirmative. In the words of Venkateswara Rao, J., at p. 143 'The disregard of law is so flagrant that it amounts to usurpation declining or abase of jurisdiction.'

20. The learned Government Pleader urged that the order, dated 8 July 1964, was only in the nature of an interlocutory order, and as there was no final adjudication of the rights of the parties to the industrial dispute before the industrial tribunal this Court should not interfere with that order in the exercise of the jurisdiction conferred on this Court by Article 226 of the Constitution. He referred to the State of Orissa v. Madangopal Bungta 1952 S.C.R. 28. The question decided in that case is in no way analogous to what I have to determine in these proceedings. Kania, C.J., observed at pp. 34-35:

The question we have to determine is whether directions in the nature of interim relief only could be granted under Article 226 when the court expressly stated that it refrained from determining the rights of the parties on which a right of mandamus or directions of like nature could be issued. In our opinion Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do.

That is not the position in the present case. As I understand the judgment of the Supreme Court, it is not an authority for the position which the learned Government Pleader took up that this Court can have no jurisdiction to interfere under Article 226 of the Constitution with what purports to be an interlocutory order of a subordinate tribunal. It is the validity of the order issued by the industrial tribunal that is in issue and if it is found that that order was beyond the jurisdiction vested in the industrial tribunal, the fact that it was an interlocutory order in the proceedings in the industrial dispute yet to be finally adjudicated upon, seems to be no bar to the exercise of the jurisdiction vested in this Court by Article 226 of the Constitution.

21. The learned Government Pleader next urged that if the tribunal had jurisdiction to order inspection of accounts this Court should not interfere with such an order even if it was passed on an erroneous application of legal principles governing inspection. But toy finding is that the industrial tribunal erroneously assumed a jurisdiction not vested in it.

22. The unreported decision of Rajagopala Ayyangar, J., in W.P. No. 473 of 1962 was referred to where he had declined to interfere with an order for inspection of accounts passed by an industrial tribunal. The only ground considered by the learned Judge there was whether the accounts relevant and necessary for the purpose of the enquiry before the industrial tribunal and none of the main questions that I have been called upon to discuss appears to have arisen for determination by my learned brother. I am unable to interpret that judgment as an authority for the position, that the only test that need be satisfied where an inspection is sought under Rule 18(1) or 18(2) of Order XI, Civil Procedure Code, is the relevancy of the accounts inspection of which is sought.

23. Sri Mohan Kumaramangalam urged that Section 7 of the Industrial Disputes Appellate Tribunal Act XLVIII of 1950 provided for an appeal against the order of the

industrial tribunal and that this Court should therefore decline to exercise its discretion to invoke the jurisdiction vested in it, under Article 226 of the Constitution. Section 7 of the Act XLVIII of 1950 provides for an appeal to the Appellate Tribunal from the 'award or decision' of an industrial tribunal. The order, dated 8 July 1954, was certainly not an award of an industrial tribunal. Sri Kumaramangalam urged that even if the order was of an interlocutory nature, it was a 'decision' of an industrial tribunal and was therefore appealable under Section 7 of Act XLVIII of 1950, since the appeal involved a substantial question of law as required by Clause (a) of Section 7. Sri Rajah Aiyar referred to the definition of 'Industrial tribunal' in Section 2(c) of Act XLVIII of 1960 and contended that what Section 7 made appealable was 'an award' of an industrial tribunal as defined by Section 2(c)(1) and (2), the decision of any of the other statutory tribunals referred to in Sub-clauses 2 and 3 of Section 2(c). I do not think it is quite necessary for me to express any opinion now on the question, whether the order of the industrial tribunal, dated 8 July 1954, is a decision within the meaning of Section 7 of Act XLVIII of 1950 and therefore appealable. The provision of an alternative remedy is not always an absolute bar to the exercise of the jurisdiction vested in this Court under Article 226 of the Constitution, though the Court should be slow to exercise such jurisdiction when there is an adequate alternative remedy open to the party. In the circumstances of this case I think I should exercise my discretion in favour of interference with an order passed by the industrial tribunal in excess of its jurisdiction.

24. I have explained above that at least a substantial part of the order of the industrial tribunal, dated 8 July 1954, in relation to that part of it which directed inspection of documents and accounts which fell within the scope of Sub-clause 2 of Rule 18 of Order XI, Civil Procedure Code, was in exercise (sic) of the Jurisdiction vested in the tribunal in the sense that it was a case of erroneous assumption of jurisdiction without satisfying itself that requisite conditions for the assumption of jurisdiction and exercise of power had been fulfilled. I have also pointed out that the industrial tribunal did not really consider whether the right claimed, by the workers' union was under Sub-clause 1 or under Sub-clause 2 of Rule 18 of Order XI, Civil Procedure Code. It is therefore necessary that the whole of the order, dated 8 July 1954, should be set aside so that the industrial tribunal can consider the whole question afresh.

25. The petition is allowed. The rule nisi is made absolute. The order of the industrial tribunal, dated 8 July 1954, is set aside. The first respondent will pay the costs of the petitioner. Counsel's fee Rs. 200.