

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

FARIDABAD GLASS WORKS (P) LTD., FARIDABAD,—
Petitioners.

versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
PUNJAB, AND OTHERS,—*Respondents.*

Civil writ No. 2002 of 1964.

*Industrial Dispute Act (XIV of 1947)—Ss. 10, 10-A and 18—
Some workmen represented by one Union entering into arbitration
agreement with Establishment—Other workmen represented by an-
other Union getting reference made to Industrial Tribunal—Appro-
priate Government—Whether bound to publish arbitration agree-
ment in Government Gazette—Respective scope of arbitration agree-
ment and reference indicated.*

1965

March, 9th.

Held, that section 10 and 10-A of the Industrial Disputes Act, 1947, provide alternative remedies to settle an industrial dispute. Whenever the same arises, it can either be referred to the Industrial Tribunal for adjudication under section 10 or the parties can enter into an arbitration agreement and refer it to an arbitrator appointed by them to give his award under section 10-A. The remedies being alternative, once certain workmen choose their remedy under section 10-A, the Government cannot refer their dispute to the Industrial Tribunal under Section 10 and in case the Government refers the dispute of the other workmen of that very Establishment to the Industrial Tribunal, then the decision of the latter would not be binding on the workmen, who had entered into an arbitration agreement. Likewise, the Arbitration award given in the case of the workmen will be binding only on those, who were parties to the arbitration agreement, and who referred the dispute to arbitration, but not on the other workmen of the same establishment. Section 18(2) of the Act clearly lays down that an arbitration award, which had become enforceable, shall be binding on the parties to the agreement, who referred the dispute to arbitration. It cannot be binding on all the workmen. A perusal of the provisions of section 18 would show that a settlement arrived at by an agreement between the employer and the workmen otherwise than in the course of conciliation proceedings shall be binding only on the parties to the agreement, whereas the settlement arrived at in the course of the

conciliation proceedings under the Act shall, by virtue of sub-section (3)(a), (c) and (d), be binding on all the parties to the industrial dispute, namely, the employers and all the workmen. Similarly, an award of a Labour Court, Tribunal or National Tribunal would be binding on all the workmen and the employer, but an arbitration award, would only be binding on the parties to the agreement, who referred the dispute to arbitration.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order dated 17th August, 1964 of the respondent No. 1, in I. D. No. 14 of 1964, pending before him in Government reference No. 116-SF-3LAB-I-64/1896, dated 7th April, 1964 and also restraining respondent No. 1 from proceeding with the trial of the said reference as regards item No. 2, thereof relating to dearness allowance to be paid to workmen of the petitioner's establishment.

RAMESHWAR DAYAL, AND GURBACHAN SINGH, AGGARWAL, ADVOCATES, for the Petitioner.

M. R. AGNIHOTRI, ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Respondents.

ORDER

Pandit, J.

PANDIT, J.—This is a petition under Article 226 of the Constitution filed by Faridabad Glass Works, (Private) Limited, (hereinafter called the Establishment). The petitioner is carrying on the business of glass works in Faridabad Town, district Gurgaon, and has about 500 workmen on its rolls. In this town, there exist two registered Unions of Glass Workers, namely, Glass and Ceramic Workers Union, respondent No. 2, and Bhargava Glass Workers Union, respondent No. 3, (hereinafter called the Ceramics Union and the Bhargava Union, respectively). The workers of the Establishment are mostly members of the one or the other Union. According to the allegations of the petitioner, on 3rd January, 1964, S. Karam Singh, President of the Ceramics Union, served the Establishment with a notice of demand relating to the payment of minimum wages to unskilled workers, increment in their wages and payment of dearness allowance to workmen and its linking with the cost of living index. On 7th January, 1964, the Establishment wrote to the Conciliation Officer, Bhiwani Circle, to intervene in this matter. During the pendency of the conciliation proceedings before the Conciliation Officer, on 14th March, 1964, the Management and

its workmen, as represented by the Ceramics Union, entered into an arbitration agreement, duly signed by Shri K. L. Dhawan, General Manager of the Establishment, and S. Karam Singh, General Secretary of the Ceramics Union, under section 10-A, of the Industrial Disputes Act, 1947, (hereinafter called the Act), in the prescribed form. The copies of this agreement were sent to the Conciliation Officer, Labour Commissioner, Punjab, and the Secretary to Government, Punjab, Labour Department. The disputes raised in the demand notice were referred to the arbitration of Shri A. N. Gujral, a former Industrial Tribunal, Punjab, living in C-II-41, Tilak Lane, New Delhi. On 17th March, 1964, the Manager of the Establishment forwarded three copies of the arbitration agreement together with the consent of the proposed Arbitrator, to the Labour Commissioner, Punjab, for publication in the Official Gazette. A letter, dated 13th April, 1964, was received from the Conciliation Officer, addressed to the Establishment and S. Karam Singh, of the Ceramics Union, asking the Manager of the Establishment to meet him on 17th April, 1964, at 10-30 a.m. in the Office of the Faridabad Industries Association at Faridabad to remove certain defects pointed out by the Labour Commissioner, while returning the copies of the arbitration agreement to him. The objections raised were that (a) the complete address of the petitioner was not given and (b) the letter of authority from the members authorising S. Karan Singh, to sign the agreement on their behalf was not enclosed. The petitioner's Manager met the Conciliation Officer on 17th April, 1964, and gave him the details and orally pointed out to him that the arbitration agreement did not suffer from the defects pointed out by the Labour Commissioner. No further communication from the Government in this connection was then received. Meanwhile, the arbitrator entered on the reference and issued notices to the parties to appear before him. Those proceedings were still pending, when, in the meantime, on 10th April, 1964, the Establishment received a copy of an order of Industrial Reference issued in the name of the Secretary to Government, Punjab, wherein the following disputes between the Establishment and the workmen were referred for adjudication to the Industrial Tribunal, Punjab:—

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- (1) Whether the termination of services of Shri Amanant Machineman is justified and in order? If not, to what relief he is entitled?

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(2) Whether the workmen should be paid any dearness allowance? If so, at what rate and with what details ?

On the receipt of this order of reference, on the same day, the petitioner wrote a letter under the signatures of the General Manager of the Establishment and S. Karam Singh, General Secretary of the Ceramics Union, to the Secretary, Labour Department, Government of Punjab, pointing out that the second dispute in the reference should not have been included therein, as it was the subject-matter of a previous reference to arbitration. This letter was followed by a telegram, which was sent on 11th July, 1964, requesting for the early publication of the arbitration agreement in the official gazette. The petitioner then received a copy of a letter, dated 5th August, 1964, addressed by the Secretary to Government, Punjab, Labour and Employment Department, to the General Secretary of the Ceramics Union, in which it was stated that the Government notification referring the dispute to the Industrial Tribunal was, dated 7th March, 1964, and the reference had been made at the instance of the Bhargava Union. It was further stated that in view of that, it would not be conducive to refer the same demand to arbitration by publishing the arbitration agreement in the official gazette, as the same was already *sub-judice*. Meanwhile, the Presiding Officer of the Industrial Tribunal, Punjab, respondent No. 1, who received the order of reference on or about 8th April, 1964, issued notices to the petitioner and the President, Bhargava Union, directing them to file their written statements. The General Manager of the Establishment in his return, dated 5th May, 1964, submitted that the demand in regard to the dearness allowance was already before the arbitrator and the dispute in respect of item No. (2) could not be gone into by respondent No. 1. On 29th May, 1964, respondent No. 1, framed issues in the case and one of them, namely, No. (2), being "Cannot Item No. (2) of the reference be adjudicated upon for the reasons given in the written statement?" This issue was decided against the petitioner by the order, dated 17th August, 1964. This led to the filing of the present writ petition on 19th September, 1964. The three prayers made in this petition are—

(1) that the order, dated 17th August, 1964, passed by respondent No. 1, be quashed;

- (2) that respondent No. 1 be prohibited from proceeding with the trial of the reference with regard to dispute No. (2), wholly or, in the alternative, as regards the workmen, who were represented by the Ceramics Union; and
- (3) that the State of Punjab, respondent No. 4, be directed by a writ of *mandamus* to publish the arbitration agreement in the official gazette.

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In the return filed by the Joint Labour Commissioner, Punjab, it was stated that the arbitration agreement referred to by the petitioner was not in order and the defects detected therein were communicated to the Establishment by the Conciliation Officer, Bhiwani, for necessary correction. As the necessary rectification was not done in time and meanwhile a reference was made to the Industrial Tribunal for adjudication of the two disputes, therefore, the Ceramics Union was informed by the Government that it would not be conducive to refer the same demand for arbitration and they should approach the Tribunal to make them a party to the reference and allow them to get the matter of dearness allowance settled through arbitration instead of adjudication. It was also stated that the proceedings, if any, started by the Arbitrator before the publication of the arbitration agreement in the official gazette as required under section 10-A (3) of the Act were invalid. It was further mentioned that the arbitration agreement, which the Government was bound to publish, must be complete in all respects and effected before the dispute had been referred under section 10 of the Act to the Labour Court or Tribunal or National Tribunal. Since in the present case, the arbitration agreement, after necessary rectification, was not received before the reference, there was no failure on the part of the Government in publishing the same. The arbitration agreement derived its authority from its publication by the Government in accordance with the provisions of the Act.

In the written statement filed by the Bhargava Union, it was mentioned that there were about 450 workmen in the petitioner's establishment. The Bhargava Union exclusively represented the workmen of the establishment and about 230 out of them were its members. So far as the Ceramics Union was concerned, it was a general Union

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of workmen belonging to different factories, carrying on the business of glass works in Faridabad. It had only a few workmen belonging to the petitioner's establishment on its rolls in 1963, but in 1964, this Union had no workman of this establishment as its member. In fact, this Union was being used by the Management of the Establishment to further its own ends. The Management got the demand notice, dated 3rd January, 1964, served by the Ceramics Union in order to defeat the real demands which were being made by their workmen at that time, and a notice about which was served on the Management by the Bhargava Union on 17th January, 1964. It was the Manager of the Petitioner's establishment, who wrote to the Conciliation Officer, Bhiwani Circle, to intervene in the dispute and this showed that the whole thing was collusive, because generally in all genuine cases it were the workmen, who had to approach the Labour Department for intervention. It was admitted that the Management of the establishment got some sort of arbitration agreement executed, but the whole thing was being manoeuvred by the Management in collusion with S. Karam Singh, who was an outsider and not himself a workman in the Establishment. The alleged agreement did not fulfil the requirements of Rule 8, of the Industrial Disputes (Punjab), Rules, 1958, (hereinafter referred to as the Rules), inasmuch as it was not signed by the President and Secretary of any Union of the workmen of the petitioner's establishment. The alleged arbitrator could not enter on the reference, before the arbitration agreement was published in the official gazette and any proceedings, taken by the alleged arbitrator without the arbitration agreement having been accepted by the appropriate Government as *bona fide* by publishing it in the official gazette, were void and ineffective. The genuine industrial disputes that existed between the workmen and the Management of the Establishment were referred under section 10 of the Act by the Punjab Government to the Industrial Tribunal, Punjab, by the notification, dated 7th April, 1964. There was no legal impediment to the reference of any of the items of the dispute mentioned in this notification, because there was no valid previous reference to arbitration. The Government was not bound to publish an arbitration agreement when it was obviously collusive. The agreement set up by the Establishment was a fraud on the statute and as such could not have any legal force.

Learned counsel for the petitioner submitted that respondent No. 1 ought to have held that the reference was wholly incompetent in regard to dispute No. 2, because of the previous arbitration agreement under section 10-A, of the Act. In the alternative, it was contended that the same was valid at least as regards the workmen, who were members of the Ceramics Union, which was a party to the arbitration agreement. It was further argued that the Government should have published this agreement in the official gazette and in any case the Government's omission to publish the same did not either affect its validity or prevent the arbitrator to investigate the dispute and proceed to deliver the award. The publication of the agreement, according to the learned counsel, was a mere formality, because the arbitrator derived his jurisdiction from the arbitration agreement and not from the Government gazette notification.

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Arbitration agreements are dealt with in section 10-A of the Act, which is in these terms—

- “S. 10-A. (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.
- (2) An arbitration agreement referred to in subsection (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.
- (3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within fourteen days from the date of the receipt of such copy, publish the same in the Official Gazette.

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- (4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.
- (5) Nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section."

According to sub-section (2), the arbitration agreement has to be in such form and signed by the parties thereto in such manner as might be prescribed. Rules for this purpose have been framed and they are as under—

"R. 7. An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in form 'C' and shall be delivered personally or forwarded by registered post in triplicate to the Labour Commissioner, Punjab.

R. 8. The arbitration agreement shall be signed: —

- (a) in the case of an employer, by the employer himself, or when the "employer is an incorporated company or other body corporate, by the agent, manager, or other principal officer of the Corporation:
- (b) in the case of workmen, either by the President and Secretary of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

Form 'C' referred to in Rule 7, is as under:—

FORM C

(See Rule 7)

AGREEMENT

(Under section 10-A of the Industrial Disputes Act, 1947).

Name of Parties. Between.
Representing employers :
Representing workmen :

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of (here specify the name(s) and address(es) of the arbitrator(s) :

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- (i) Specific matters in dispute :
- (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved :
- (iii) Name of the Union, if any, representing the workmen in question :
- (iv) Total number of workmen employed in the undertaking affected :
- (v) Estimated number of workmen affected or likely to be affected by the dispute :

Witnesses :—

- (1)
- (2)

Signature of the Parties :
Representing Employer :
Representing workmen :

Copy to —

- (i) The Conciliation Officer, (here enter the office address of the Conciliation Officer in local area concerned).
- (ii) The Labour Commissioner, Punjab.
- (iii) The Secretary to Government, Punjab, Labour Department."

In the present case, admittedly, the arbitration agreement which is annexure 'A' to the writ petition, was signed by Shri K. L. Dhawan, General Manager, representing the employers, and S. Karam Singh, General Secretary, representing the workmen. According to the petitioner, the following two objections to the arbitration agreement were pointed out by the Labour Commissioner, Punjab :—

- (1) that the complete address of the arbitrator was not given therein; and
- (2) that the letter of authority from the members authorising S. Karam Singh, to sign the agreement on their behalf was not enclosed.

It may be mentioned that in their return, the Joint Labour Commissioner has not given a copy of the objections taken

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by him, but he has admitted that these were the objections raised. So far as the first objection is concerned, it is meaningless, because in the arbitration agreement, the address of the arbitrator is clearly given as C-11-41, Tilak Lane, New Delhi. With regard to the second, the same is not correct, because the General Secretary of the Union did not require any letter of authority from the members authorising him to sign the arbitration agreement on their behalf. The objection which could have been taken in accordance with Rule 8, was that the agreement should also have been signed by the President of the Union. This, however, was not raised. In case this defect had been pointed out, the same could have been removed by getting the agreement signed by the President. Moreover, the arbitration agreement was, dated 14th March, 1964, and it was sent to the Labour Commissioner on 17th March, 1964. On that very day, a copy of the same was sent to the Conciliation Officer, Bhiwani Circle, as well. In spite of that, the objections were raised by the letter, dated 13th April, 1964, while the reference to the Industrial Tribunal had already been made on 7th April, 1964. These objections should have been raised before a reference to the Industrial Tribunal was made under section 10 of the Act, because the proceedings under section 10-A, had already started by the execution of the arbitration agreement, dated 14th March, 1964. It may be mentioned that sections 10 and 10-A of the Act provide alternative remedies to settle an industrial dispute. Whenever the same arises, it can either be referred to the Industrial Tribunal for adjudication under section 10 or the parties can enter into an arbitration agreement and refer it to an arbitrator appointed by them to give his award under section 10-A. The remedies, as already mentioned above, are alternative and once certain workmen choose their remedy under section 10-A, the Government cannot refer their dispute to the Industrial Tribunal under Section 10 and in case the Government refers the dispute of the other workmen of that very Establishment to the Industrial Tribunal, then the decision of the latter would not be binding on the workmen, who had entered into an arbitration agreement. Likewise, the arbitration award given in the case of the workmen will be binding only on those, who were parties to the arbitration agreement, and who referred the dispute to arbitration, but not on the other workmen of the same establishment. In this connection, reference may be made to section 18(2) of the Act, which

clearly lays down that an arbitration award, which had become enforceable, shall be binding on the parties to the agreement, who referred the dispute to arbitration. The contention of the learned counsel for the petitioner that the arbitration award would also be binding on all the workmen is without any substance. A perusal of the provisions of section 18 would show that a settlement arrived at by an agreement between the employer and the workmen otherwise than in the course of conciliation proceedings shall be binding only on the parties to the agreement, whereas the settlement arrived at in the course of the conciliation proceedings under the Act shall by virtue of sub-section (3) (a) (c) and (d) be binding on all the parties to the industrial dispute, namely, the employers and all the workmen. Similarly, an award of a Labour Court, Tribunal or National Tribunal would be binding on all the workmen and the employer, but an arbitration award, (as already mentioned above), would only be binding on the parties to the agreement, who referred the dispute to arbitration. In the present case, the objection with regard to the arbitration agreement having not been signed by the President of the Union was not pointed out and, as such, this mistake, which appears to be a *bona fide* one, can be rectified even now and when the same has been done, then the Government should publish the arbitration agreement in accordance with the provisions of section 10-A (3), of the Act. The reference to the Industrial Tribunal with regard to dispute No. 2 was, therefore, invalid *qua* the workmen, who were parties to the arbitration agreement.

It may be mentioned that the case of the Labour Commissioner now in his return is that the date of reference to the Industrial Tribunal was 7th April, 1964, and not 7th March, 1964, as mentioned in the impugned order of respondent No. 1.

In view of what has been said above, I hold that the workmen, who are members of the Ceramics Union, which had entered into an arbitration agreement with the Establishment under section 10-A, would not be bound by the reference made to the Industrial Tribunal with respect to dispute No. 2 and no proceedings *qua* them can be started by respondent No. 1. It may be pointed out that the contention of the Establishment is that a number of workers employed by them belong to the Ceramics Union, while, on

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the other hand, the case of the Bhargava Union, is that no workman of this Establishment is at present the member of the Ceramics Union. This matter will be decided by the Industrial Tribunal and those workers, who are found to be the members of the Ceramics Union, will not be considered to be parties to the industrial reference so far as dispute No. 2, is concerned and the award of respondent No. 1, will not be binding on them. The Establishment will get the arbitration agreement signed by the President of the Ceramics Union and if that is done, then the Government is directed to publish the same in the official gazette.

The result is that this writ petition succeeds and the order, dated 17th August, 1964, of respondent No. 1, *qua* the workmen, who are proved to be the members of the Ceramics Union, is hereby quashed. There will, however, be no order as to costs. It is, however, understood that if the Establishment fails to get the arbitration agreement signed by the President of the Ceramics Union within a reasonable time to be fixed by respondent No. 1 or the Ceramics Union is unable to prove to the satisfaction of respondent No. 1, that any of the workers of this Establishment are its members, then the impugned order of respondent No. 1 would stand.

B.R.T.

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TEJ PARKASH SINGH, AND ANOTHER,—*Petitioners.*

versus

THE DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB, JULLUNDUR, AND OTHERS,—*Respondents.*

Civil Writ No. 2791 of 1964.

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March, 11th.

East Punjab Holdings (consolidation and Prevention of Fragmentation) Second Amendment and Validation Act (XXV of 1962) -S. 11(a)-Petitions pending before delegate of State Government under S. 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) at the time of the coming