

A M/S BENNET COLEMAN & CO. LTD

v.

STATE OF BIHAR & ORS

B (Criminal Appeal No. 269 of 2015)

FEBRUARY 10, 2015.

[KURIAN JOSEPH AND N.V. RAMANA, JJ.]

C *Industrial Disputes Act, 1947: s.25U r/w s.29 – Non-*
D *implementation of recommendation of Wage Board*
E *constituted under Working Journalists Act – Prosecution*
F *u/s.25U of the I.D. Act – Maintainability of – Held: The*
G *recommendations of the Wage Board is neither an award*
H *nor a settlement in terms of the provisions under the I.D.*
Act – It is not passed by the Labour Court or Industrial
Tribunal or National Industrial Tribunal – It is neither an
Arbitration Award in terms of s.10A of the I.D. Act nor a
settlement in terms of s.2(b) of the I.D. Act – It is not an
agreement between the parties – Its enforceability, being
a recommendation, depends on the order passed by the
Central Government – Prosecution under the provisions
of ID Act is thus not maintainable as there is no award
or settlement or agreement which has been violated so
as to make them liable for prosecution – Working
Journalists and other Newspaper Employees (Condition
of Service) and Miscellaneous Provisions Act, 1955 –
s.3.

G **Allowing the appeals and dismissing the**
H **contempt petitions, the Court**

HELD: Section 2(b) of the I.D. Act defines ‘award’.

The provision shows that it must be the determination of an industrial dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal. It could also be an arbitration award under Section 10A. Being a dispute on wages, there cannot be any dispute that the issue under reference is an industrial dispute. The Wage Board, constituted under Section 9 read with Section 13C of the Working Journalists Act, submitted their recommendation in terms of Section 10 of the Working Journalists Act. Section 1 of their recommendation, is titled as Manisana (Wage Board) Award. Even according to the Wage Board, though it is titled as Award, they are only recommendations. The same can only be so under the Working Journalists Act in terms of Section 10 of the Act. Thus, in legal parlance, the Wage Board recommendations made under Section 10 of the Working Journalists Act is not an award under Section 2(b) of the I.D. Act. Once the recommendations under Section 10 are received, it is for the Central Government to issue appropriate orders so as to enforce the same in terms of Section 12 of the Working Journalists Act. If the said order is not complied with, the employees may take recourse to Section 17 of the Working Journalists Act. Section 11(1) of Working Journalist Act provides for exercise of the powers of the Tribunal by the Wage Board in the process of making its recommendations in regulating its procedure. The provision does not make Wage Board a Tribunal. The Tribunal under the I.D. Act does not make recommendations, it passes award; whereas the Wage Board under the Working Journalists Act is competent only to make a recommendation in terms of Section 10 and after the notification of the recommendations by

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A the Central Government if there is any dispute regarding any amount due under the notification, a dispute is raised under Section 17(2) of the Working Journalists Act and thereafter an award is passed by the Labour Court. [Para 9, 10, 12 to 16, 21] [376-H; 377- A-B, E-G; 378- F-G; 380- B- B C; 381- E; 386- B-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 269 of 2015.

C From the Judgment and Order dated 11.08.2010 of the High Court of Patna at Patna in Misc. Cr. Case No. 12876 of 2004.

WITH

Crl. A. Nos. 270, 271 & 272 of 2015

Conmt. Pet. (C) Nos. 171 & 172 of 2012

D P. P. Rao, Bhaskar P. Gupta, K. Datta, Ashish Verma, Rahul Malhotra, Abhay Kumar, Manish Srivastava, Shahid Anwar, Deepak Goel for the Appellant.

E Sikumar, Deepak Goel, Gopal Singh, Rituraj Choudhary, Rashmi Srivastava, R. Gopalakrishnan for the Respondents.

The Judgment of the Court was delivered by

KURIAN JOSEPH, J.

CRIMINAL APPEAL NO. 269 OF 2015

F (ARISING OUT OF SLP(CRL.) NO. 10134/2010)

1. Leave granted.

G 2. Whether the appellant is liable to be prosecuted under Section 25U read with Section 29 and under Serial No. 13 of the Fifth Schedule of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act') is the question arising for consideration in this case. The allegation is that the recommendations of the Manisana Wage Board have not been properly implemented, a section of the journalists have been discriminated in a hostile manner and thus,

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BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 375
[KURIAN, J.]

there is unfair labour practice.

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3. The Deputy Labour Commissioner, Patna preferred a complaint before the Chief Judicial Magistrate, Patna with the allegations referred to above seeking prosecution of the appellant under Section 25U read with Section 29 of the I.D. Act.

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4. The appellant preferred a petition before the High Court under Section 482 Cr.P.C., the same was dismissed holding that the complaint was maintainable and thus, the present appeal.

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5. Mr. P.P. Rao, learned senior counsel, submits that the prosecution under the provisions of I.D. Act is not maintainable as there is no award or settlement or agreement which has been violated so as to make them liable for prosecution. The Wage Board under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, 'Working Journalists Act'), has only given their recommendations as per Section 10 and under Section 12, the same have been notified by the Central Government. In case, the orders notified under Section 12 are not implemented, the remedy is under Section 17 of the Working Journalists Act for recovery of money due from the employer. Under Section 17(2) of the Working Journalists Act, if there is any dispute with regard to the amount due under the Act, it is for the State Government to refer the question to the Labour Court of competent jurisdiction constituted under the provisions of the I.D. Act and it is for that Court to pass the award. In case such an award is not complied with, then alone arises a question of prosecution under Section 25U, even if the Industrial Disputes Act as such is applicable.

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A 6. Learned counsel appearing for the State and the
Employees Union submits that by virtue of Section 3 of
the Working Journalists Act, the provisions of I.D. Act as
such have been made applicable, the recommendations
of the Wage Board is an award, the award has not been
B implemented in its letter and spirit, a section of the
employees has been discriminated and thus, the
prosecution is maintainable.

7. The moot question is as to the jurisdiction of the
C Court to proceed under the provisions of the I.D. Act.
Section 3 of the Working Journalists Act reads as follows:-

“3. Act 14 of 1947 to apply to working journalists.
– (1) The provisions of the Industrial Dispute Act,
D 1947 (14 of 1947), as in force for the time being,
shall, subject to the modification specified in sub-
section (2), apply to, or in relation to, working
journalists as they apply to, or in relation to,
workmen within the meaning of that Act.

E 8. Sub-section (2) of Section 3 of the Working
Journalists Act provides for a modification in the
application of Section 25F; which is not relevant in the
present case. As per Section 3 of the Working Journalists
F Act, the provisions of the I.D. Act have been made
applicable to the working journalists, as if they are
workmen under the I.D. Act. Thus, being a legislation by
reference, provisions of I.D. Act are applicable so far as
working journalists are concerned.

G 9. An award is defined under Section 2(b) of the I.D.
Act, which reads as follows:-

“2 (b) “award” means an interim or a final
H determination of any industrial dispute or of any

BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 377
[KURIAN, J.]

question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;” A

10. The provision would show that it must be the determination of an industrial dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal. It could also be an arbitration award under Section 10A. B

11. Industrial dispute is defined under Section 2(k), which reads as follows:- C

“2(k) “industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;” D E

12. Being a dispute on wages, there cannot be any dispute that the issue under reference is an industrial dispute.

13. The Wage Board, constituted under Section 9 read with Section 13C of the Working Journalists Act, submitted their recommendation in terms of Section 10 of the Working Journalists Act. Section 1 of their recommendation, is titled as Manisana (Wage Board) Award. It is significant to note that when the Central Government, in terms of Section 12 of the Working Journalists Act, issued the notification on 5.12.2010 (Annexure P1), the recommendations were incorporated under Part Three. To the extent relevant, we shall extract Part Three, which F G H

A reads as follows:-

“PART THREE

Chapter 1

B Recommendation of the Wage Boards for working journalists and non-journalist newspaper employees (other than newspaper employees in new agency)

C Section 1

Preliminary

D Short title and commencement.- (1) These recommendations may be called the Manisana (Wage Board) Award.

E (2) The Award shall be deemed to have come into force on the first day of April, 1998 in respect of the newspaper establishments of Classes III and above and on the first day of June, 1999 in respect of the newspaper establishments of Classes IV and V and on the first day of April, 2000 in respect of the newspaper establishments of Classes VI to IX.”

F 14. It may be seen that even according to the Wage Board, though it is titled as Award, they are only recommendations. The same can only be so under the Working Journalists Act in terms of Section 10 of the Act, which reads as follows:-

G “10. Recommendation by Board.— (1) The Board shall, by notice published in such manner as it thinks fit, call upon newspaper establishments and

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BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 379
[KURIAN, J.]

working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations as they may think fit as respects the rates of wages which may be fixed or revised under this Act in respect of working journalists. A B

(2) Every such representation shall be in writing and shall be made within such period as the Board may specify in the notice and shall state the rates of wages which, in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to the person making the representation in relation to his representation. C D

(3) The Board shall take into account the representation aforesaid, if any, and after examining the materials placed before it make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages in respect of working journalists; and any such recommendation may specify, whether prospectively or retrospectively, the date from which the rates of wages should take effect. E F

(4) In making any recommendations to the Central Government, the Board shall have regard to the cost of living, the prevalent rates of wages for comparable employment, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant. G H

A Explanation. – For the removal of doubts, it is hereby declared that nothing in this sub-section shall prevent the Board from making recommendations for fixation or revision of rates of wages on all India basis.”

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15. Thus, in legal parlance, the Wage Board recommendations made under Section 10 of the Working Journalists Act is not an award under Section 2(b) of the I.D. Act. Once the recommendations under Section 10 are received, it is for the Central Government to issue appropriate orders so as to enforce the same in terms of Section 12 of the Working Journalists Act, which reads as follows:-

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“12. Powers of Central Government to enforce recommendations of the Wage Board.— (1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

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(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit, –

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(a) Make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit:

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Provided that before making any such modifications, the Central Government shall cause

BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 381
[KURIAN, J.]

notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing ; or A

(b) refer the recommendations or any part thereof to the Board in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit. B C

(3) Every order made by the Central Government under this section shall be published in the official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order." D E

16. If the said order is not complied with, the employees may take recourse to Section 17 of the Working Journalists Act, which reads as follows:-

"17. Recovery of money due from an employer.-
(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government or such authority, as the State Government may specify in F G H

A this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

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D (2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

E (3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section(1)"

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18 17. There is also a provision for penalty under Section 18 of the Working Journalists Act, which reads as follows:-

G 18. Penalty.- (1) If any employer contravenes any of the provisions of this Act or any rule or order made thereunder, he shall be punishable with fine which may extend to two hundred rupees.

H (1A) Whoever, having been convicted of any offence under this Act, is again convicted of an

BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 383
[KURIAN, J.]

offence involving the contravention of the same provision, shall be punishable with fine which may extend to five hundred rupees. A

(1B) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: B C

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this section if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. D

(1C) Notwithstanding anything contained in sub-section (1B), where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to, any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly. E F G

(1D) For the purposes of this section. –

(a) “company” means any body corporate and H

A includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

B (2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this section.

C (3) No court shall take cognizance of an offence under this section, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed."

D 18. Having regard to the scheme of the Working Journalists Act and having regard to the provisions of the I.D. Act, as incorporated by Section 3 of the Working Journalists Act, prosecution for unfair labour practice is maintainable only under Section 25U. Section 25U provides for penalty for committing unfair labour practice and Section 29 provides for penalty for breach of settlement or award. Section 2(ra) of the I.D. Act defines unfair labour practice. Settlement is defined under Section 2(p) to be a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and the workmen otherwise than in the course of conciliation proceedings. The recommendations of the Wage Board is thus neither an award nor a settlement in terms of the provisions under the I.D. Act. It is not passed by the Labour Court or Industrial Tribunal or National Industrial Tribunal and it is not an Arbitration Award in terms of Section 10A of the I.D. Act. It is not a settlement in terms of Section 2(b) of the I.D. Act. It is not an agreement between the parties. Its enforceability, being a

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BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 385
[KURIAN, J.]

recommendation, depends on the order passed by the Central Government. The Central Government has passed that order by issuing Annexure P1 notification. If the same is not complied with, as we have already referred to above, the remedies lie under Section 17 for recovery or under Section 18 for penalty and not under the provisions of the I.D. Act. A B

19. During the course of hearing, we are informed that the Employees' Union have already taken recourse to the remedy under Section 17(2) of the Working Journalists Act with regard to the amounts due in terms of the notification issued by the Central Government under Section 12 and the same is pending before the Labour Court, Patna (Case Reference No.7/2013). If the Labour Court passes an appropriate award and in case the same is not implemented then alone there arises a question of prosecution under Section 25U read with Serial No.13 of the Fifth Schedule of the I.D. Act "Failure to implement award, settlement or agreement". C D

20. Learned counsel for the respondents has also made a submission that in terms of Section 11 of the Working Journalists Act, the Wage Board may exercise all powers of the Industrial Tribunal under I.D. Act to the extent relevant. Section 11(1) reads as follows:- E F

"11. Powers and procedure of the Board.—(1) Subject to the provisions contained in sub-section (2), the Board may exercise all or any of the powers which an Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), exercises for the adjudication of an industrial dispute referred to it and shall, subject to the provisions contained in this Act, and the rules, if any, made thereunder have power to regulate its G H

A own procedure. “

21. A bare reading of the provision would show that the same provides for exercise of the powers of the Tribunal by the Wage Board in the process of making its
B recommendations in regulating its procedure. The provision does not make Wage Board a Tribunal. The Tribunal under the I.D. Act does not make recommendations, it passes award; whereas the Wage Board under the Working Journalists Act is competent only to make a
C recommendation in terms of Section 10 and after the notification of the recommendations by the Central Government if there is any dispute regarding any amount due under the notification, a dispute is raised under Section 17(2) of the Working Journalists Act and thereafter an
D award is passed by the Labour Court.

22. The appeal is hence allowed, the impugned order is set aside and the complaint and order passed by the Magistrate taking cognizance are quashed.

E 23. There will also be a direction to the Labour Court, Patna to dispose of the Case Reference No.7/2013, pending before it, expeditiously.

F 24. We make it clear that this order shall not stand in the way of the Employees Union taking recourse to other remedies, if any, available to them under other provisions of the Working Journalists Act or the I.D. Act.

G CRIMINAL APPEAL NO.270 OF 2015

(ARISING OUT OF SLP(CRL.) NO.1884/2011)

CRIMINAL APPEAL NO.271/2015

H (ARISING OUT OF SLP(CRL) No. 1956/2011),

BENNET COLEMAN & CO. LTD v. STATE OF BIHAR 387
[KURIAN, J.]

CRIMINAL APPEAL NO.272/2015

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(ARISING OUT OF SLP(CRL) No. 1957/2011,

25. Leave granted.

26. In view of the judgment dated 10.02.2015 passed in Criminal Appeal No.269/2015 arising out of SLP (CRL) No.10134/2010, the impugned orders are set aside and the complaint and order passed by the Magistrate taking cognizance are quashed and the appeals are allowed.

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CONMT.PET.(C) No. 174/2012 In SLP(CRL) No. 1957
2011

CONMT.PET.(C) No. 172/2012 In SLP(CRL) No. 1884/
2011

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27. In view of the judgment dated 10.02.2015 passed in Criminal Appeal No.269/2015 arising out of SLP (Crl) No.10134/2010, nothing survives in these contempt petitions, which are, accordingly, dismissed.

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Devika Gujral

Appeals allowed &
Contempt Petition dismissed.