



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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A REVIEW ON THE DISPUTE RESOLUTION MECHANISM UNDER THE INDUSTRIAL DISPUTES ACT

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Introduction

The industrialized economy has two faces needed for the execution of the objective of the industry: The Management and the Workmen. These two entities have different roles and responsibilities entailed upon them for the benefit of the functioning of an industry. The former focuses on the managerial aspect while the latter enhances on the production, hence the goals of these two groups would differ. When the tangents of such goals meet at a point where it overlaps or encroaches upon the rights of either party it results in a dispute. The Industrial Disputes Act (hereinafter ID Act) have formulated mechanisms to ensure a speedy process of settling such issues through negotiation, mediation, conciliation and arbitration.

Industrial Dispute

Section 2(k) of the ID Act defines the concept of Industrial Dispute which defines as a conflict of interest or a disagreement between an employer and employer, an employer and a workman or between workmen and workmen¹. The cause of such disagreement, according to the provision, should have arisen either due to the employment and work or labour conditions or the terms of employment. The constitution of what makes up to be an industrial dispute has been under the judicial scrutiny due to the categorization of disputes, it was noted that an individual dispute becomes an industrial dispute when trade unions get involved in the settlement proceedings which is categorized as an interest dispute.

The initial phase pointed out to the fact that this legislation focussed on industrial disputes rather than individual disputes because the intend was to uphold the collective rights of the

¹ Industrial Disputes Act, 1947, No. 2(j), Acts of Parliament, 1947 (India)

workers or employers². The judicial interpretation of the term industrial disputes included the notion that it involves the dispute of rights of a larger group of people³. It was after the insertion of Section 2A, the aspect of industrial disputes covered the ambit of individual disputes under this Act.

Dispute Mechanism

The initial step into resolving the disputes between the entities of an industry is the establishment of a Works Committee which is propounded in Section 3 of the ID Act. It constitutes of representatives of employers and employees and its major duty is to maintain goodwill relations. Sub-section 2 of this provision grants this committee to formulate opinions on matters arising upon the dispute between the parties. This was reiterated in the case of *Kemp & Company Ltd v Their Workmen*⁴ where it was put forth that the committee focuses on the day-to-day activities and grievances of the employers and employees, wherein they address the issues and reach upon an agreement if necessary. The problem behind this provision is the lack of addressing a fixed scope as to the matters the Works Committee can forward its opinion and address on and the definition of what constitutes a “day-to-day activity”.

The next aspect is the concept of collective bargaining, where the parties to the dispute attempt to resolve through means of negotiating without the coercion. The important factors which are to be noted alongside the process of such settlements is that it is amicable, wherein the differences are settled through mutual agreements. Another duly noted characteristic is that it is voluntary and thus holds superiority over any agreement which is settled through third-party interventions.

When collective bargaining fails, the appropriate government, will appoint conciliation officers for the purpose to intervene and settle such industrial disputes between the parties through mediation which is put forth in Section 4 of the ID Act. It also empowers the constitution of Board of Conciliation for the above-mentioned purpose as stated in Section 5, with a chairperson who is an independent member and two to four other members who are the representatives of the employer and employee. Further the other authorities include the Court of Inquiry (Section 6), Labour Courts (Section 7) and Tribunals (Section 7 A).

² Central Provinces Transport Services Ltd v Raghunath Gopal Patwardhan (1957) 1 LLJ 27 (SC)

³ DN Banerji v PR Mukherjee (1953) 1 LLJ 195,199

⁴ (1955)IILLJ481MAD

Procedure and Settlement of Disputes

According to Section 11 of the ID Act, it confers the powers upon the Conciliation Officer, Board, Labour Court and the Tribunal, which is equivalent to that of the Civil Court. This points to the notion that they have the power to summon and examine witnesses and documents and pass any order deemed to be fit. The officers also have the power to investigate and inspect the records of the industry for the purpose of resolving the dispute, at any point of time when deemed to be necessary. If any settlement agreement is being failed to achieve during this process, then the officer should write in record the reasons for such failure and send it to the appropriate government as provided under Section 12 of the ID Act.

It is upon this conjecture that the court will decide if this matter has to be referred to the Labour Court or the Tribunal and it is done so only if it is satisfied to refer such matter. If the grounds are not met, then the government in writing should state the reasons for the refusal of the same. The next step in authority is the board which should submit the report within two months and if no such settlement is arrived at, then the report is sent to the government for it to make the decision upon the reference of this matter to the labour court or tribunal.

When this matter reaches the above-mentioned authority, it is the duty of the court or the tribunal to adjudicate upon the matter and reach an agreement in an expeditious manner. The provision which is to be taken into importance is Section 17, where the government has the power to modify or rectify the award in accordance to the circumstances of the external factors affecting the country. This gives an undue advantage to the governmental authorities in the decision making of dispute settlement mechanisms. Moreover, in the case of *The Govt. of India v National Tobacco Company*⁵, it was held that such discretionary nature of the government is not mandatory and can be challenged through Article 226 of the Constitution. The court in its decision have also upheld the importance of the decisions given by tribunals and that the government should take them into consideration.⁶ These judicial decisions attempt to achieve a balance between the possible arbitrariness of the government with respect to its involvement in the dispute settlement mechanisms.

⁵ AIR1977AP250

⁶ 1991 SCC (2) 176

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