

State of Bihar

Vs

Kripa Shankar Jaiswal

Criminal Appeal No. 83 of 1959

(J.L. Kapur, P.B. Gajendragadkar, K. Subha Rao, K.N. Wanchoo JJ)

14.10.1960

JUDGMENT

KAPUR J. -

This is an appeal brought pursuant to a certificate under art. 134(1)(c) of the Constitution against the judgment and order of acquittal of the High Court of Patna.

There were certain disputes between the workmen and the Management of Mankatha Distillery of which the proprietor is the respondent. On November 23, 1953, a petition was submitted on behalf of the workmen of the Distillery to the Assistant Labour Commissioner, Bhagalpur, which was signed by one Banarsi Choudhari on behalf of himself and for and on behalf of the workmen of the Distillery. In this petition, certain grievances of the workmen were set out. Conciliation proceedings were started, and there was an agreement on December 5, 1953, which the High Court has described as 'some sort of agreement'.

On January 12, 1954, an application was made for the registration of the Union of the workmen of the Distillery under the Indian Trade Unions Act, and the same was registered on March 23, 1954, under the name and of Mankatha Distillery Mazdoor Panchayat. The distillery was closed and the workmen were discharged, and thereafter on February 19, 1954, The General Secretary of the Mankatha Distillery Mazdoor Panchayat, even though it was not registered at the time, sent a letter to the Management, protesting against the discharge of the workmen without payment of compensation and objecting to the intention of the employers to re-start the factory after employing other workmen. It was also stated therein that the workers who had been discharged, had been working for some years and a list of such workmen was attached to the letter. The following portion of the letter is relevant for the purposes of this appeal :-

"All the persons, named below, shall work in the factory in legal manner, on monthly salary on permanent basis. It is not only hoped, rather fully believed that you would consider the above facts and gladly accept the same.

On getting a satisfactory reply, all the workers, who had been working in your factory since years, would report themselves to duty and work according to your orders". Although it is addressed to the proprietors of the Distillery, it seems to have been sent to the Assistant Commissioner of Labour, Bhagalpur, where it was received on February 25, 1954. The following endorsements were made on this letter :-

"Discussed with you. The management is requested to attend conciliation proceeding

on 10th March, 1954, at 11 a.m. The Union is also informed accordingly".

Another petition dated March 5, 1954, was sent by the General Secretary of the Distillery Mazdoor Panchayat to the Assistant Labour Commissioner, in which the names of all the persons who had been freshly employed by the proprietors, were mentioned and it was prayed that those who were discharged at the time of the closing of the factory, may be reinstated and wages paid, and a request was made to the Assistant Labour Commissioner to visit and see the situation for himself and get the workmen reinstated. The order on this petition was :-

"The parties have been called to-morrow in my office for conciliation. The result of the proceeding may be awaited."

On March 18, 1954, a settlement was arrived at between the management and the workers which is signed by the Conciliation Officer appointed under section 4 of the Industrial Disputes Act, 1947 (Act 14 of 1947) (hereinafter termed, for the sake of brevity, the Act). This document was signed by the proprietor and the manager of the Distillery and by Banarsi Choudhuri, General Secretary of the Workers' Panchayat and also by six other members of the Panchayat who were evidently the members of the Executive Committee of the Panchayat. The terms of the settlement were as follows :

1. It is agreed that the workers named in Schedule "A" shall be taken to jobs without break in their services.
2. The new hands appointed after the closure of the factory shall be discharged.
3. If three shifts will start and any other increased opportunity of employment will be available in the factory, the management shall employ only those workers who are left to-day and who had worked in August 1953 and September 1953 in order of seniority.
4. Shri Banarsi Choudhry, Balmiki Singh, Bhaso Singh and Kaltu (?) Singh are accused in a case pending before the Court at Monghyr. The management agrees that if they will be acquitted from the court, they will be given jobs.
5. All the workers will be put in permanent basis as they were previously. The order putting them in the temporary basis after the opening of the Mill (?) is cancelled.
6. The arrears will be paid on monthly basis as before instead of weekly basis as at present after the re-opening of the factory.
7. The grievances raised by the workers and covered by the agreement dated the 5th December, 1953, will be decided by the Labour Commissioner Bihar, Patna and his decision shall be acceptable to and final for the parties.
8. The work of the factory will be resumed immediately.
9. The workers will continue to have all the benefits and privileges which are guaranteed by law or usage and custom.
10. The workers will not be victimised for their Trade Union activities".

The prosecution case is that the terms of the settlement were not carried out in that the old workmen were not re-employed and the newly employed workmen were not discharged. Thereupon, the respondent and the manager of the Distillery, one Ram Narain Lal were prosecuted on a complaint filed by the Labour Superintendent, Mr. L. D. Singh, after sanction of the Government of Bihar had been obtained. Both the accused persons were convicted and sentenced to a fine of Rs. 150 each or, in default, one month's simple imprisonment. The learned Magistrate held that there was an industrial dispute within the meaning of the Act, and that the conciliation settlement dated March 18, 1954, was a valid settlement and the respondent failed to implement the first term of the settlement. Against this order, an appeal was taken to the Sessions Court and the Third Addl. Sessions Judge dismissed the appeal. He confirmed the findings of the learned Magistrate.

Against this order of the Sessions Judge, an appeal was taken to the High Court by the respondent only, and the High Court set aside the order of conviction and acquitted the accused. It held that there was no recognised Union, though there was "some kind of a vague Union" existing, and that because the Conciliation Officer had visited the Distillery without giving a reasonable notice, the "decision of the Conciliation Officer on 18-3-1954, must, therefore, be deemed to be without jurisdiction", and that there was no agreement arrived at between the proprietor on one side and the "labourers" as a whole on the other, and "it is preposterous to suppose that because some labourers had signed the settlement that is bound all the labourers. It seems to me that there is a serious defect in this settlement which is described as a decision of the Conciliation Officer dated 18-3-1954". On the ground, therefore, that the settlement was not a settlement which was binding on the respondent, the conviction was set aside.

It would be an erroneous view if it were said that for a dispute to constitute an industrial dispute it is a requisite condition that it should be sponsored by a recognised union or that all the workmen of an industrial establishment should be parties to it. A dispute becomes an industrial dispute even where it is sponsored by a union which is not registered as in the instant case or where the dispute raised is by some only of the workmen because in either case the matter falls within section 18(3)(a) and (d) of the Act. See also *Newspapers Limited, Allahabad v. The State Industrial Tribunal, Uttar Pradesh* ([1960] 2 L.L.J. 37 at 38.). The settlement of March 18, 1954, arrived at during the conciliation proceedings was signed by the General Secretary and members of the executive committee of the Union though it was unregistered at the time. We cannot therefore give our accord to the decision that the settlement of March 18, 1954, was not a settlement binding between the parties.

The scope and effect of section 11(2) was raised before us and it was argued that because the conciliation officer did not give any reasonable notice before he came to the Distillery on March 18, 1954, the settlement was not a legal settlement and consequently was not binding on the parties and its breach could not fall within the penal consequences of section 29 of the Act. Now, section 11(2) provides :-

"A conciliation officer or a member of a Board or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates".

Section 11 only deals with the procedure and powers of the conciliation officers and sub-section 2 authorises the conciliation officer to enter the premises occupied by any establishment to which the dispute relates after giving a reasonable notice. This notice is only for the purpose of entering the premises to make an enquiry into any existing industrial dispute or an apprehended industrial

dispute, and is merely to apprise the establishment that it is the conciliation officer who is coming and not an absolute stranger who has no connection at all with the machinery set up for the purposes of the Act. The absence of a notice under section 11(2) therefore does not affect the jurisdiction of the Conciliation Officer.

As to what the conciliation officer can and should do, is contained in section 12 of the Act. Sub-section 1 empowers the conciliation officer to hold conciliation proceedings in the case of a public utility services after notice under section 22 whereby a mandatory duty is cast upon him to do so, and in other disputes it is his discretion to hold conciliation proceedings in the prescribed manner. Under sub-section (2) he has to investigate without delay the dispute in all matters affecting the merits of the dispute, and he can do such things as he thinks necessary for inducing the parties to come to a fair and amicable settlement. Sub-section (3) provides that if a settlement of the dispute is arrived at, a report thereof shall be sent to the appropriate Government, and sub section (4) also provides for the sending of a similar report to the appropriate Government if no settlement is arrived at. Sub-section (5) deals with the powers of the Government when a report is received as to the non-settlement of the dispute, and sub-section (6) which was relied upon provides :-

Section 12(6) "A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Provided that the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute."

It was argued that because the report had not been sent to the Government within fourteen days of the commencement of the conciliation proceedings, the settlement arrived at was invalid and was not binding. This contention must be repelled because any contravention of section 12(6) may be a breach of duty on the part of the conciliation officer; that does not affect the legality of the proceedings which terminated as provided in section 20(2) of the Act. It was so held by this Court in *Andheri Marol Kurla Bus Service v. The State of Bombay* ([1969] Supp. 2 S.C.R. 734.). It cannot be said, therefore, that the settlement which was arrived at on March 18, 1954, was not a legal settlement and that a breach of it would not attract the penal provisions of section 29 of the Act.

After the case was decided by the Judicial Magistrate the parties arrived at a fresh settlement on October 6, 1956, which recited :

"That, this settlement made this day the 6th October, 1956, at Patna, settles all the pending grievances and/or demands of workmen whatsoever".

As a result of this out of the discharged workmen 25, whose names are given in Appendix A attached to the compromise, were reinstated with effect from October 8, 1956. The claim with regard to the other discharged workmen was withdrawn. This settlement was accepted by the Industrial Tribunal by an order dated October 10, 1956. This shows that all disputes between the parties have been settled and workmen have been reinstated. In view of this in the words of Subba Rao, J., in *the State of Bihar v. Hiralal Kejri Lal* ([1960] 1 S.C.R. 726, 736.) "public interest does not require that the stale matter should be resuscitated". Therefore we do not think it necessary to interfere under art. 136 with the order of the High Court.

The appeal is therefore dismissed.

Appeal dismissed.

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