

The Bombay Union of Journalists and Others

Vs

The 'Hindu', Bombay, and Another

Civil Appeal No. 22 of 1961

(K. N. Wanchoo, J. C. Shah JJ)

27.09.1961

JUDGMENT

SHAH, J. –

This is an appeal with special leave against an award of the Industrial Tribunal, Bombay, By its award the Tribunal rejected the reference holding that it had no jurisdiction to adjudicate upon the dispute submitted to it by the Government of Bombay.

Salivateeswaran (the third appellant) who claimed to be a full time employee of the first respondent - "The Hindu", Bombay - addressed a letter on February 15, 1956, to the Managing Editor for "The Hindu" - a daily newspaper published at Madras - intimating that he was proceeding to Europe on March 1, 1956. On February 16, 1956, the Assistant Editor of "The Hindu" informed Salivateeswaran that even though the letter was not a full time employee of "The Hindu", they could "not allow frequent breaks in the performance of" of his duties and that they would have to relieve him of his duties as correspondent from March 1, 1956, if he proceeded to Europe as arranged by him. Salivateeswaran having persisted in carrying out his project by letter dated February 29, 1956, he was informed by the Management that he ceased to be a correspondent of "The Hindu" from March 1, 1956. After returning from his tour of Europe Salivateeswaran, on July 5, 1956, demanded reinstatement and called upon the management of "The Hindu" to treat the period of his absence out of India as leave. The management of "The Hindu" having declined to accede to that demand, Salivateeswaran filed an application under section 17 of the Bombay Working Journalist (Conditions of Service) and Miscellaneous Provisions Act 45 of 1955, claiming Rs. 1,57,172-8-0 under diverse heads alleging that termination of his employment was wrongful and that it amounted to retrenchment. The management of "The Hindu" denied that Salivateeswaran was their employee and submitted that the Authority under Act 45 of 1955 had no jurisdiction to decide disputed questions of fact. The Authority rejected this contention holding that he was competent to decide disputed questions arising in the case before him. The management of "The Hindu" presented a petition under Act. 32 of the Constitution for a direction quashing the order of the Authority, contending that section 17 of the Act did not empower the Authority to act as a forum for adjudicating disputed claims. This Court upheld [see Kasturi and Sons (Private) Ltd. v. Salivateeswaran ([1959] S. C. R. 1)] the plea of the Management of "The Hindu", but dismissed the petition holding that no fundamental right of the Management was infringed by the order passed by the Authority. Acting on the view expressed by this Court the Authority declined to proceed with the application, because disputed questions of fact fell to be determined in the petition before him.

"The Hindu" had an office in Bombay since 1937. At the material time, "The Hindu" had besides Salivateeswaran only nine employees - seven serving on the administrative side and two journalists -

Venkateswaran and Tiwari. Salivateeswaran and Venkateswaran were members of the Bombay Union of Journalists : Tiwari, the other journalist employee, was not member of the Union. The Bombay Union of Journalists is a Trade Union, the Membership of which is open to all persons who depend for their livelihood upon the practice of the profession of journalism, including press photographers, artists, cartoonist and free-lance writers. This Union is admittedly not a union of employees of "The Hindu", Bombay, but it is a Union of all persons who depend for their livelihood upon journalism in Bombay. By its resolution dated August 16, 1956, the Bombay Union of Journalists supported the claim of Salivateeswaran in the application filed by him under section 17 of Act 45 of 1955.

Between April 9, 1958, and April 15, 1958, four letters were addressed by 225 members of the Union (amongst whom Venkateswaran was not included) informing the Union that the termination of employment of Salivateeswaran raised "questions of principle and it was necessary that there should be a proper adjudication in which the principles may be settled" and therefore they supported the cause of Salivateeswaran and requested the Union to take all appropriate steps to approach the state of Bombay for referring the dispute to an appropriate tribunal for adjudication under section 10(1) (c) of the Industrial Disputes Act.

The Union claims that these letters amounted to a requisition for calling a meeting and that they were placed before an adjourned meeting of the General Body on April 17, 1958, held under the chairmanship of one D. V. Nathan, and in that meeting it was resolved to support the cause of Salivateeswaran in the dispute with "The Hindu", Bombay. On April 25, 1958, the Union wrote to the Proprietor of "The Hindu" Bombay to settle the dispute raised by Salivateeswaran. "The Hindu" Bombay having declined to accede to the request, the Union moved the Conciliation Officer appointed under the Industrial Disputes Act to intervene. The dispute was taken up for Conciliation by the Conciliation Officer, Bombay, but after holding several meetings with the parties, the Conciliation Officer by his report dated December 5, 1958, reported failure in his efforts to bring about conciliation. Thereafter, on February 9, 1959, the State of Bombay referred the dispute between "The Hindu", Bombay, and Salivateeswaran for adjudication under section 12(5) of the Industrial Disputes Act, 1947. The order of the Government, the effect whereof falls for determination in this case is as follows :-

"No. AJN. 7458-H-Whereas the Government of Bombay has considered the report submitted by the Conciliation Officer under sub-section (4) of section 12 of the Industrial Dispute Act, 1947, (XIV of 1947), in respect of the dispute between the Hindu, Bombay and the workman (Working Journalists) employed under it over the demands mentioned in the Schedule appended hereto;

And whereas the Government of Bombay are considering the aforesaid report is satisfied that there is a case for reference of the dispute to a Tribunal;

Now, therefore, in exercise of the powers conferred by sub-section (5) of the Section 12 of the Industrial Disputes Act, 1947 (XIV of 1947), read with Section 3 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (XIV of 1955), the Government of Bombay hereby refers the said dispute for adjudication to the Tribunal consisting of Shri M. H. Meher constituted under Government Notification, Labour and Social Welfare Department, No. IDA. 1157(b) dated the 12th March, 1957."

By the Schedule, the claim of Salivateeswaran to receive in the aggregate Rs. 1,52,172-8-0 under diverse heads was set out.

"The Hindu", Bombay, challenged the competence of the State Government to refer this dispute on three grounds : (1) that there was no industrial establishment of "The Hindu" in Bombay and, therefore, the Industrial Tribunal had no jurisdiction in the matter; (2) that Salivateeswaran was not a working journalist within the meaning of the Act and was not employed as such by "The Hindu", and there being no relationship of employer and employee between "The Hindu" : and Salivateeswaran, the Industrial Tribunal had no jurisdiction to adjudicate upon the dispute and (3) that there was no dispute between the Working Journalists of "The Hindu", Bombay, on the one hand and the Management on the other and the dispute raised by Salivateeswaran was merely an individual dispute which was not supported by an appreciable number of employees of "The Hindu", Bombay. The Tribunal rejected the first and the second grounds but upheld the third, and holding that the dispute was merely an individual dispute between Salivateeswaran and "The Hindu", Bombay, which had not been supported by an appreciable number of employees of "The Hindu", Bombay, the Government of Bombay had no jurisdiction to refer the dispute to the Tribunal.

The terms of reference by the Government of Bombay under section 12(2) indicate that the dispute was primarily between "The Hindu" Bombay, and the appellant a - single employee relating to his individual claim in which the other employees of "The Hindu", Bombay, were, not directly interested. In *Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan* ([1956] S. C. R. 956), this Court after setting out the three possible views on the question whether a dispute by an individual workman may be regarded as an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, 1947 observed, "The preponderance of judicial opinion is clearly in favour of the last of the three views stated above (i. e. a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen and there is considerable reason behind it. Notwithstanding that the language of section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen. " This view was reiterated in *The Newspapers Ltd. v. The State Industrial Tribunal*. U. P. ([1957] S. C. R. 754). Therefore, the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make common cause with individual workman.

The dispute, in the present case, being prima facie, an individual dispute, in order that it may become an industrial dispute it had to be established that it had been taken up by the Union of employees of "The Hindu", Bombay, or by an appreciable number of employees of "The Hindu", Bombay. Counsel for the appellant contended that the dispute was supported by the Bombay Union of Journalists of which Salivateeswaran was a member and that, in any event, it was supported by Venkateswaran and Tiwari, who were the only other employees in this establishment. He also contended that in any event the dispute having been taken up by the Indian Federation of Working Journalists after it was referred to the Tribunal, it had become an industrial dispute.

By its constitution the Bombay Union of Journalists is a Union not of employees of one employer,

but of all employees in the industrial of journalism in Bombay. Support of the cause, by the Union, will not in our judgment convert the individual dispute of one of its members into an industrial dispute. The dispute between "The Hindu", Bombay, and Salivateeswaran was in respect of alleged wrongful termination of employment; it could acquire the character of an industrial dispute only if it was proved that it was, before it was referred, supported by the Union of the employees of "The Hindu", Bombay, or by an appreciable number of its employees. In *Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate* ([1958] S. C. R. 1156). This Court held by a majority that the two tests of an industrial dispute as defined by sub-section (k) of section 2 of the Industrial Disputes Act, 1947, must, therefore be - (1) the dispute must be a real dispute capable of being settled by relief given by one party to the other and (2) the person in respect of whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be), the parties to the dispute have a direct or substantial interest, and this must depend on the facts and circumstances of each case. In that case, certain employees sought to raise a dispute about a person who was not a workman. In the present case members of the Union who were not workmen of the employer against whom the dispute was sought to be raised, seek by supporting the dispute to convert what is prima facie an individual dispute into an industrial dispute. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view applies to this class of cases also : persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. The mere support to his cause by the Bombay Union of Journalists cannot therefore assist the claim of Salivateeswaran so as to convert it into an industrial dispute.

But counsel for the appellants submits that Venkateswaran being a member of the Bombay Union of Journalists, support of the cause by that union amounted to espousal of the cause by Venkateswaran, and having regard to the fact that there were only three employees who were journalists of "The Hindu", Bombay, out of whom, Venkateswaran had supported the cause, the dispute acquired the character of an industrial dispute. It is true that the Executive Committee of the Bombay Union of Journalists had in August 1956, resolved to support the cause of Salivateeswaran but that resolution was in respect of the application under Act 45 of 1955. The Union appeared before the Authority appointed by the Government of Bombay and also in this Court in the petition under Article 32 of the Constitution, but that support cannot, in our judgment assist the claim now made by Salivateeswaran. The proceedings under section 17 of the Working Journalists (Conditions of Service) Act terminated when the Authority refused to proceed with the petition. Again, there is nothing to show that Venkateswaran had participated in any of these proceeding.

Venkateswaran and Tiwari filed affidavits before the Tribunal stating that the dispute between Salivateeswaran and the management of "The Hindu" was purely a personal affair of the former and that they had not made common cause with him in regard to the dispute or adopted his dispute as their own. Venkateswaran and Tiwari stated in their affidavits that they had not at any time, nor did they support Salivateeswaran's claim in any manner. Venkateswaran also stated that he had not at any time authorised the Bombay Union of Journalists to take up Salivateeswaran's "matter" and to raise the dispute thereon. The affidavits filed by Venkateswaran and Tiwari were almost in identical terms and it may reasonably be inferred that these employees had acted in concert, but there is no reason to suppose that they were, as contended by Salivateeswaran, coerced into filing the affidavits.

Counsel for the appellants strongly relied upon a resolution passed at an Extraordinary Meeting of the Bombay Union of Journalists dated April 17, 1958, to take up the dispute of Salivateeswaran against "The Hindu" under section 10 of the Industrial Disputes Act to demand reliefs for the

"retrenched journalist Salivateeswaran". But evidence in support of this resolution is very unsatisfactory. For reasons to be presently set out, we are of the view that the evidence tends to establish the plea raised by the first respondent that the record of the alleged resolution was fabricated with a view to support the case of Salivateeswaran.

The alleged meeting of April 17, 1958, was not convened as an Extraordinary General meeting of the Union. It is claimed that it was an adjourned meeting, the earlier meeting having been held on April 5, 1958, and adjourned. Mahatame - the Secretary of the Union at the relevant time - deposed that a requisition having been received for calling a meeting the requisition was considered in the meeting dated April 17, 1958, and a resolution supporting the case of Salivateeswaran was passed. In cross-examination, he admitted that the agenda of the meeting was not available and that he was deposing about what happened in the meeting from memory. He stated that there were cyclostyled copies of the agenda which were destroyed and no copies were kept; that there was no agenda of the meeting of April 17 and that no copies of the notice were maintained; that no minutes of the General Body meeting were maintained and that there was nothing in writing to show who attended the meetings of April 5 and April 17 and "all that happens in General Body meetings is recorded in annual reports". He admitted that the requisitions were received after the 5th of April and under the rules of the Union, 15 days' notice was necessary for convening a meeting. He stated that he had received all the requisitions before April 17, but there was no record about the receipt of the requisition. According to Mahatame, 225 members had signed the requisition and at the meeting they had asked that the matter be brought up, but there was no record as to who was present. He asserted that the notice of the meeting dated April 17 was issued but he could not say whether it was issued on April 9 or thereafter. It is difficult to accept the testimony of Mahatame that even though minutes of the Executive Committee's meetings were maintained, records relating to the General Body meetings were not preserved. Mahatame's explanation that the agenda was cyclostyled and thereafter destroyed is too crude to be accepted. Other circumstances to which we will presently advert make it abundantly clear that the story about the resolution having been passed on April 17, 1958, is untrue.

The original resolution was produced in the course of the trial as Ext. U-86. This document contains inherent evidence that it was not made on April 17, 1958. It purports to be dated April 17, 1958, and bears the signature of D. V. Nathan, the president, but by some mischance the year was originally written as 1959 and then altered to 1958. This may very well indicate that the writer was writing in 1959 and not in 1958. D. V. Nathan, who it is stated presided over the meeting, has not been examined. Mahatame stated that in the Annual Report of the year 1957-58 which was published sometime at the end of the year, 1958, there is a reference to the meeting of April 17, 1958, but in the report the meeting of April 5 is mentioned, and the meeting of April 17 is not at all mentioned. The letters of the members are not in truth requisitions at all : they are merely requests made by some members to the Union to support the cause of Salivateeswaran, and do not request the Secretary to call a meeting. If a requisition, according to the rules was in fact received, a meeting had to be called after notice of 15 days for that purpose. Under clause 7(c) of the Constitution and Rules of the Bombay Union of Journalists meetings of the General Body require 15 days' clear notice except when a meeting has been adjourned in which case a week's notice will suffice. It is also provided by clause (g) that resolutions regarding other business which a member may desire to be taken up at any meeting should also be given seven clear days before the meeting. Under clause 19, a notice of a general Body meeting has to be sent to every member individually by the Secretary in the time prescribed in clause 7 of the Constitution, and by clause 18, sub-clause 2(a), the Secretary has to maintain the minutes of all meetings, conduct all correspondence, convene all meeting, exercise supervision over the affairs and activities of the Union. Of the alleged meeting

dated April 17, 1958, clear notice of 15 days was not given. Of resolutions regarding other business which a member may desire to be taken up at any meeting 7 days, clear notice is required by the rules, but it is not shown to have been given. There is no evidence that the notice for a General Body meeting of the time prescribed under clause 7 was given to the members, and the Secretary had made a startling statement that he did not maintain any minutes of the meeting, but had copied out the resolution on a loose sheet of paper. The subsequent conduct of the office bearers of the Union also strongly supports the contention raised by counsel for the respondents that the resolution is fabricated at some later date. In the letter dated April 25, 1958, it was stated that the Bombay Union of Journalists had taken up the dispute of Salivateeswaran and called upon "The Hindu", Bombay, to settle the dispute amicably, but there is no reference of the resolution passed on April 17, 1958. The resolution was not mentioned even in the statement of claim before the Industrial Tribunal. In paragraph 33 of the statement of claim it was stated that more than 200 members of the Union had written to the Union supporting the working journalist (Salivateeswaran) and urging the Union to take up his case under Industrial Disputes Act, but there was no reference to the resolution dated April 17, 1958. "The Hindu" in paragraph 4 of its reply has expressly averred that apart from the statement that 225 members of the Union requested its Secretary to take up the cause of Salivateeswaran, there is nothing to show that the Union as such had passed any resolution of authorised its Secretary to take up Salivateeswaran's cause and to raise an industrial dispute thereon. This statement of "The Hindu" was not challenged by an affidavit in reply alleging that the claim of Salivateeswaran was supported by a resolution of the Union. When Venkateswaran was examined on June 12, 1959, he was not asked in cross-examination about the resolution. Even when Salivateeswaran was examined the resolution was not produced : it was for the first time produced on July 9, 1959. The letters requesting the Union to espouse the cause of Salivateeswaran were written between April 9 and April 15, 1958, and it is suggested that the matter was taken up in the meeting of April 17. If the meeting of April 17 was an adjourned meeting (the previous meeting being of April 5) in the agenda there could be no reference to the consideration of these letters and it could not take up fresh matters. Beyond the bare statement of Mahatame supported by the interested testimony of Salivateeswaran there is no reliable evidence that in the meeting of the 17th the Secretary moved the resolution about Salivateeswaran and it was adopted without opposition the documentary evidence which should normally have been in existence if the case that the Union passed a resolution on April 17, 1958, was true, has not been produced on the plea either that it was not maintained or that it was destroyed. Even on the case of the appellants, there is nothing to show that notice of the meeting dated April 17 convened for the purpose of considering the requisition was ever given to Venkateswaran and if it was not given, by the mere passing of a resolution by other members of the Union the case of the appellants that the claim of Salivateeswaran was supported by Venkateswaran cannot be supported.

The Tribunal observed that if even after the reference Venkateswaran and Tiwari ceased to support the cause of Salivateeswaran, being the only person who could support the cause, the reference must fail, and in support of that view relied upon the judgment of a Single Judge of the Madras High Court in *The Hindu v. The Working Journalists of the Hindu in Madras* ([1959] II L. L. J. 348), but this decision has since been overruled by a Division Bench of the Madras High Court in the *Working Journalists of the Hindu v. The Hindu* ([1961] I L. L. J. 288). In that case the Court observed : "It must be held that the jurisdiction of the labour court to proceed with the matter wholly depends on whether the industrial dispute referred to it for adjudication existed or was apprehended on the date of the reference and not on any subsequent date. Having regard to the relevant statutory provisions it must be held that the jurisdiction of the labour court to proceed with and adjudicate upon an industrial dispute stems from and is sustained, until it makes an award and

the same becomes enforceable, by the reference itself which has been made on the basis of an industrial dispute existing or apprehended on the date of the reference and that the jurisdiction of the labour court to proceed in the matter is not in any way affected by the fact that subsequent to the date of the reference, the workers or a substantial section of them who had originally sponsored the cause, had later resiled and withdrawn from it. " In our view, these observations correctly set out the effect of a subsequent withdrawal of support by the workmen of a cause previously espoused by them. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up as supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. If Venkateswaran or Tiwari had prior to the date of the reference supported the cause of Salivateeswaran, by their subsequent affidavits the reference could not have been invalidated. But as we have already observed there was, in fact, no support to the cause of Salivateeswaran by Venkateswaran or by Tiwari and therefore the dispute continued to remain an individual dispute.

The effect of the support to the cause of Salivateeswaran by the Indian Federation of Working Journalists and the claim founded thereon does not call for any detailed consideration. After the reference was submitted and it was pending hearing before the Tribunal a letter was written by the President of the Indian Federation of Working Journalists to the General Secretary of the Bombay Union of Journalists on April 16, 1959, stating that the Federation had lent support to Salivateeswaran in the writ petition filed by "The Hindu" in the Supreme Court and that the Federation did so as it was a test case. Another letter dated April 17, 1959, was addressed by the General Secretary of the Indian Federation of Working Journalists to the General Secretary, Bombay Union of Journalists Bombay, stating that they had advised Salivateeswaran to file a petition before the Presiding Officer of the Industrial Court in Bombay and had also intervened in the Supreme Court, and further that the Federation fully supported all actions taken by the Bombay Union of Journalists to get justice for Salivateeswaran, The Secretary of the Union by letter dated July 9, 1959, wrote to the President and Secretary-General of the Indian Federation of Working Journalists that Salivateeswaran's case was being heard for a week and that Salivateeswaran was to undergo cross-examination on the next day and that Mahatame, the previous Secretary was to give evidence. He further stated "I am of opinion that we must produce some document whereby it will be possible to prove that the Federation had supported Salivateeswaran's case" and requested the Federation to send a document in the form of a minute of a meeting or a letter or a resolution and if there was none such on the record, to pass a fresh resolution supporting the Bombay Union's action regarding Salivateeswaran's case and to send the same by return of post. Taking a clue from this letter, on July 24, 1959, the President of the Federation sent a copy of the resolution alleged to have been adopted by the members of the Working Committee of the Indian Federation of Working Journalists regarding Salivateeswaran's case. The draft resolution sought to support the case of the Bombay Union of Journalists before the Industrial Tribunal, Bombay, and to "direct the Union to fight the case with all its strength". This resolution is alleged to have been passed by circulation after the commencement of the adjudication proceedings. If the dispute was in its inception an individual dispute and continued to be such till the date of the reference by the Government of Bombay, it could not be converted into an industrial dispute by support subsequent to the reference even of workmen interested in the dispute. We have already held that subsequent withdrawal of support will not take away the jurisdiction of an industrial tribunal. On the same reasoning subsequent support will not convert what was an individual dispute at the time of reference into an industrial dispute. The resolution of the Indian Federation of Working Journalists, assuming that it has any value, would not be sufficient to convert what was an individual dispute into an industrial dispute.

On the view taken by us this appeal must fail and is dismissed with costs.

Appeal dismissed.

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