Workmen of Indian Express (P) Ltd.

Vs

The Management

Civil Appeal No. 1733 of 1967

(J. M. Shelat, V. Bhargava JJ)

2611.1968

JUDGMENT

SHELAT, J. -

1. The workmen, Gulab Singh and Satya Pal, were appointed by the respondent company in December, 1956 and February, 1955, respectively under the designation of copy-holders. It was alleged that they were entrusted with the duties of proof-readers and therefore they claimed that they should be treated as such. In July, 1959, the management issued an order in which the two workmen described as copy-holders. It was alleged that in spite of this order the management continued to give the workmen the work of proof-readers. A dispute whether the two workmen should be treated as proof-readers having arisen and having been espoused by the Delhi Union of Journalists, the Delhi Administration, by a notification dated August 2, 1961, referred it to the Industrial Tribunal, Delhi.

2. The management contended that the said dispute was an individual dispute and not an industrial dispute and that, that being so it was wrongly referred to the Tribunal and the Tribunal had no jurisdiction to adjudicate it. The Tribunal raised the preliminary issue, namely, whether the dispute relating to the said two workmen was an industrial dispute. The Tribunal held that it was not an industrial dispute but was only an individual dispute of the two workmen and therefore it had no jurisdiction to adjudicate the said reference. The workmen obtained special leave from this court and that is how this appeal has come up before us for disposal.

3. Apart from the oral evidence, the appellants relied on two documents, Ex. WW-1/A, which purported to be the minutes of a meeting held on November 15, 1960 of 17 working journalists and Ex. WB-1, purporting to be the minutes of a meeting of the Executive Committee of the Delhi Union of Journalists held on December 1, 1960. The union maintained that these two resolutions were proof of espousal of the dispute, the first by an appreciable number of the co-workers of the two aggrieved workmen and the second by the union and therefore the dispute though originally an individual dispute was converted into an industrial dispute. The Tribunal rejected Ex. WW-1/A, namely, the minutes of the alleged meeting of the 17 working journalists in the employ of the respondent company as unreliable. The Tribunal next considered whether, even assuming that the said 17 working journalists espoused the cause of the two workmen that espousal transformed the dispute in question into an industrial dispute, in other words, whether they constituted an appreciable number sufficient to change the dispute into an industrial dispute. At the material time the Branch Office of the respondent company at Delhi consisted in all of 388 employees, out of whom 140 were working in the press. The working journalists numbered 131, out of whom 63 were outstation correspondents and the remaining 68 were working journalists performing their duties in

Delhi and New Delhi. The Tribunal held that though the said 63 working journalists were outstation journalists, they nevertheless belonged to the staff of the respondent company's Delhi Branch, and therefore, could not be excluded from consideration. The question which the tribunal posed to itself was whether 17 out of the said 131 working journalists could be said to be an appreciable number. According go the Tribunal, even if those 63 outstation correspondents were excluded and only 68 working journalists were considered, 17 of them would not constitute an appreciable number sufficient to convert said dispute into an industrial dispute. It also held that mere passing of a resolution without anything done to follow it up was not sufficient to constitute espousal. There was no evidence that after passing the said alleged resolution on November 15, 1960, anything further was done. On these facts the Tribunal did not consider the aforesaid resolution, assuming that it was passed, as constituting espousal.

4. As regards the resolution, dated December 1, 1960, the minutes of the meeting of the Executive Committee of the Delhi Union of Journalists were produced before the Tribunal. The minutes stated that the meeting after considering the representation made to it by the employees of the Indian Express decided to take up the case of the two workmen and authorised the office bearers of the union to initiate the necessary proceedings. The Tribunal found that the union initiated a fresh dispute before the Conciliation Officer and that there was no pending case initiated earlier, i.e. before December 1, 1960, by another union as alleged by the appellants which could have been continued by the union. A copy of the statement of claim filed by the union before the Conciliation Officer was also produced before the Tribunal. There was evidence that 31 working journalists employed in the respondent company had become the members of the Delhi Union of Journalists. But they had joined the union after the said order of July, 1959. The Tribunal's view was that the said 31 working journalists having joined the Delhi Union of Journalists after the cause of action had arisen in July, 1959, the said resolution of the union's Executive Committee would not constitute espousal, as there would be no nexus between the dispute and the union, and therefore, resolution dated December 1, 1960, did not have the effect of converting the said dispute into an industrial dispute.

5. Mr. Ramamurti, for the appellants, contended that the resolution, dated December 1, 1960, coupled with the fact that the union initiated conciliation proceedings in respect of the demand of the said two workmen was sufficient to transform the dispute into an industrial dispute. On the other hand, Mr. Gupte, appearing for the company, contended that a dispute which is prima facie an individual dispute may assume the character of an industrial dispute, if it is taken up or espoused by an appreciable body of the workmen of the establishment. Espousal by a union is regarded as sufficient, for that means that it is an espousal by an appreciable number of workmen in that establishment. If such a dispute is espoused by an outside union, the workmen of the establishment, appreciable in number, must be members of such a union. On these contentions the question for our determination is whether the Delhi Union of Journalists can be said to have espoused the dispute of the two workmen; if so, whether it did in time, and whether the union not being exclusively a union of the workmen employed in the respondent company, could espouse the said cause.

6. The resolution, dated December 1, 1960, passed by the Executive Committee of the union was not disbelieved by the Tribunal. That, coupled with the fact that the union authorities initiated the conciliation proceeding, must mean that union had espoused the cause of the two workmen. The dispute arose in July, 1959, when the management refused to treat the two workmen as proof-readers. Thereafter the Executive Committee, after considering a representation made to it by the employees of the respondent company, as the resolution reads, passed the said resolution authorising the officer-bearers of the union to initiate proceedings in the matter of the said dispute and the

Secretary accordingly initiated proceedings before the Conciliation Officer. In these circumstances, it is not possible to appreciate how the espousal by the union can be said to be beyond time, as such espousal can only take place after and not before the dispute arose, or as counsel put it, the cause of action arose. In The Bombay Union of Journalists v. The Hindu, Bombay (1962 (3) SCR 893), this court in clear terms laid down that the test of an industrial dispute is whether at the date of the reference the dispute was taken up and supported by a union, or by an appreciable number of workmen. There being no doubt of the union having taken up the cause of the two workmen before the reference the first two parts of the question must be answered in the affirmative.

7. The next question is whether the cause of a workman in a particular establishment in an industry can be sponsored by a union which is not of workmen of that establishment but is one of which membership is open to workmen of other establishments is that industry. In Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan (1956 SCR 956), this court noted that decided cases in India disclosed three views as to the meaning of an industrial dispute : (1) a dispute between an employer and a single workman cannot be an industrial dispute, (2) it can be an industrial dispute, and (3) it cannot per se be an industrial dispute but may become one if taken up by a trade union or a number of workmen. After discussing the scope of industrial dispute as defined in Section 2(k) of the Act it observed that the preponderance of judicial opinion was clearly in favour of the last of the three views and that there was considerable reason behind it. In the Newspapers Ltd. v. The State Industrial Tribunal, U.P. (1957 SCR 754), the third respondent was employed as a lino typist by the appellant company. On an allegation of incompetence he was dismissed from service. His case was not taken up by any union of workers of the appellant company, nor by any of the unions of workmen employed in similar or allied trades. But the U.P. Working Journalists Union, Lucknow, with which the third respondent had no concern, took the matter to the Conciliation Board. On a reference being made to the Industrial Tribunal by the Government the legality of that reference was challenged by the appellant company on the ground that the said dispute could not be treated as an industrial dispute under the U.P. Industrial Disputes Act, 1947, which defined by Section 2 an industrial dispute as having the same meaning assigned to it in Section 2(k) of the Central Act. This court upheld the contention observing that the notification referring the said dispute proceeded on an assumption that a dispute existed between the employer and "his workmen", that Tajammul Hussain, the workman concerned, could not be described as "workman" nor could the U.P. Working Journalists Union be called "his workman" nor was there any evidence to show that a dispute had got transformed into an industrial dispute. The question whether the union sponsoring a dispute must be the union of workmen in the establishment in which the workman concerned is employed or not had not so far arisen. It seems such a question arose for the first time in the case of Bombay Union of Journalists v. The Hindu, Bombay (supra). ((1962) 3 SCR 893) The decision in that case laid down - (1) that the Industrial Disputes Act excluded its application to an individual dispute as distinguished from a dispute involving a group of workmen unless such a dispute is made a common cause by a body or a considerable section of workmen and (2) the members of a union who are not workmen of the employer against whom the dispute is sought to be raised cannot by their support convert an individual dispute into an industrial dispute. Persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. The court held that the dispute there being prima facie an individual dispute it was necessary in order to convert it into an industrial dispute that it should be taken up by a union of the employees or by an appreciable number of employees of Hindu, Bombay. The Bombay Union of Journalists not being a union of the employees of the Hindu, Bombay, but a union of all employees in the industry of journalism in Bombay, its support of the cause of the workman concerned would

not convert the individual dispute into an industrial dispute. The members of such a union cannot be said to be persons substantially and directly interested in the dispute between the workman concerned and his employer, the Hindu Bombay. But in Workmen v. M/s. Dharampal Premchand ((1965) 3 SCR 394), this court, after reviewing the previous decisions, distinguished the case of Hindu, Bombay and held that notwithstanding the width of the words used in Section 2(k) of the Act a dispute raised by an individual workman cannot become an industrial dispute, unless it is supported either by his union or in the absence of a union by a number of workmen, that a union may validly raise a dispute though it may be a minority union of the workmen employed in an establishment, that if there was no union of workmen in an establishment a group of employees can raise the dispute which becomes an industrial dispute even though it is a dispute relating to an individual workman and lastly that where the workmen of an establishment have no union of their own and some or all of then have joined a union of another establishment belonging to the same industry, if such a union takes up the cause of the workman working in an establishment which has no union of its own, the dispute would become an industrial dispute if such a union can claim a representative character in a way that its support would make the dispute an industrial dispute.

8. The evidence of the union secretary as that in 1959-60, 31 working journalists of the respondent company were members of the Delhi Union of Journalists. It was nobody's case that these 31 members did not continue to be the members of that union in 1960-61 also. If the number of working journalists in the respondent company were to be taken as 68, membership of the union by as many as 31 working journalists would certainly confer on the union a representative character. Even if the number of working journalists were to be taken as 131, it would not be unreasonable to say that 31, i.e., about 25 per cent. of them would, by becoming the members of the union, give a representative character to the union. It is clear from the evidence that at the material time there was no union of working journalists employed by the respondent company. Therefore, in accordance with the decision in the Workmen v. M/s. Dharampal Premchand (supra), the union can be said to have a representative character qua the working journalists employed in the respondent company. There can be no doubt that the union had taken up the cause of the two workmen by its executive committee passing the said resolution and its office-bearers having followed up that resolution by taking the matter before the Conciliation Officer. Though the grievance of the two workmen arose in July, 1959, when the management declined to accept them as proof-readers the union had sponsored their cause before the date of reference as laid down in the case of Hindu, Bombay. That being the position it cannot be gainsaid that the dispute was transformed into an industrial dispute as it was sponsored by a union which possessed a representative character vis-a-vis the working journalists in the employ of the respondent company.

9. We must, therefore, hold that the tribunal's view that the dispute was not an industrial dispute was incorrect. The award, therefore, will have to be aside and the appeal of the workmen allowed. There will be no order as to costs.

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