M/s. Western India Match Co., Ltd.

Vs

The Western India Match Co. Workers Union and Others

Civil Appeal No. 1914 of 1968

(J. M. Shelat, C. A. Vaidialingam, Jagmohan Reddy JJ)

09.01.1970

JUDGMENT

SHELAT, J. -

1. On May 9, 1956, the appellant-company appointed respondent 3 as a foreman on probation for a period of six months. On expiry of that period the probationary period was extended from time to time and ultimately respondent 3 was transferred to the labour office of the company. On May 29, 1957, while respondent 3 was still serving his probationary period, the company terminated his service. The matter was thereupon taken by the respondent 1 before the Regional Conciliation Officer, Bareilly, who registered the case as Case No. 83-B/57. For the reasons hereinafter stated, no conciliation could be arrived at and the State Government declined to make a reference for adjudication under the U.P. Industrial Disputes Act, 1947 (herein after called the Act). On the said refusal, respondent 3 filed a writ petition in the High Court for a mandamus. The High Court dismissed the petition on the ground that the decision of the State Government to refer or not to refer a dispute for adjudication was a matter for its discretion. By about the end of 1962 the respondent-union made further representation to the State Government and by its order dated August 28, 1963 the Government made a reference of the dispute regarding the said termination of the service of respondent 3 to the Labour Court for adjudication. By its order, dated March 22, 1965 the Labour Court rejected the reference on the ground that there was no industrial dispute, and therefore, the reference was not maintainable. Respondents 1 to 3 thereupon filed a writ petition in the High Court which was allowed by a learned Single Judge. An appeal against the said order filed by the appellant-company was dismissed. This appeal, by special leave, is directed against the order of the High Court dismissing the appellant-company's writ petition.

2. Counsel for the appellant-company, in support of the appeal, raised the following points : (1) Was it possible for the respondent union to validly espouse the cause of respondent 3 when he was not a member at the date when his service was terminated ? Even if it was, was there in fact an espousal so as to convert his individual dispute into an industrial dispute ? (2) Do the words "at any time" in Section 4(k) of the Act have any limitations, or can the Government refer a dispute for adjudication after the lapse of about six years, as in his case, after the accrual of the cause of the dispute ? (3) In what circumstances can the Government refer such a dispute fir adjudication after it has once refused to do so ?

3. The definition of 'industrial dispute' in Section 2(i) of the Act is in the same language as that in Section 2(k) of the Industrial Dispute Act, 1947. The expression "industrial dispute", therefore, must bear the same meaning as it is assigned to that expression in the Central Act. It is now well-settled by a long series of decisions that notwithstanding the wide language of the definition in Section 2(k)

of the Central Act, the dispute contemplated there is no an individual dispute but one involving a substantial number of workmen. However, a dispute, though originally an individual dispute, may become an industrial dispute if it were to be espoused and made a common cause by workmen as a body or by a considerable section of them. Section 4(k) of the Act, therefore, must be held to empower the Government to make a reference of such a dispute only for adjudication. It provides that where the State Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing, refer the dispute for tribunal depending upon whether the matter of the industrial dispute falls under one or the other Schedule to the Act.

4. The first question that falls for determination is whether where a dispute is originally an individual dispute but becomes an industrial one as a result of its being espoused by a union or a substantial number of workmen, the concerned workman should have been a member of such union at the time when the cause of such dispute arises. It appears that at one time there was a conflict of judicial opinion on this question. Some of the High Courts took the view that in order that an individual dispute may be converted into an industrial dispute on, as aforesaid, its being espoused by a substantial number of workmen, the concerned workman must be a member of the union at the time of the accrual of the cause of the dispute. Thus, in Padarthy Ratnam & Co. v. Industrial Tribunal (1958 2 LLJ 290) the High Court of Andhra Pradesh held that a dispute simpliciter between an employer and a workman might develop into an industrial dispute if the cause is espoused by a union of which he is a member, and that the membership of the union which would give it the jurisdiction to espouse his cause must be anterior to the date of the dismissal and not subsequent to it. A similar view was also taken by the High Courts of Kerala and Punjab. (See Shamsuddin v. State of Kerala (1961) 1 LLJ 77) and Khadi Gramodyog Bhavan v. E. Krishnamurthy, Industrial Tribunal (AIR 1966 Punj 173). In a later decision, however, the High Court of Punjab appears to have taken a contrary view. In Muller & Phipps (India) (P.) Ltd. v. Their Employees' Union (1967) 2 LJJ 222) the dispute related to the retrenchment of a workman and the failure of the employer to re-employ him in spite of its having re-employed two other employee out of their turn as against the turn of the concerned workman. The High Court rejected the employer's contention that the espousal of the union was not valid as it was made after the retrenched workman had ceased on his being retrenched to be a member of the union on the ground that if that contention were to be upheld it would mean that no union can ever espouse the cause of a retrenched workman. In Workmen v. Jamadoba Colliery of Tata Iron and Steel Co. Ltd (1967) 2 LLJ 663). the union which espoused the cause of the workman came into existence after his dismissal. The workman naturally became its member after his dismissal. The High Court disagreed with the Tribunal, which had rejected the reference, and held that even if, on the date of the dismissal of a workman, the dispute was an individual dispute, it may under some circumstances become an industrial dispute on the date of the reference and that the validity of the reference has to be judged on the facts as they stand on the date of the reference and not at the date of the dismissal. Therefore, even if there was no union at the date of the workman's dismissal to espouse his cause, if such a union comes into existence before the reference and the dismissed workman becomes its member and the union thereupon espouses his cause that would be sufficient. It also held that there was no principle in support of the view that the union must be in existence at the time of the dismissal.

5. After the decision by this Court in Workmen v. Management of Dimakuchi Tea Estate (1958 SCR 1156) there can be no doubt that though the words "any person" in the definition of an industrial dispute in Section 2(k) of the Central Act are very wide and would on a mere literal interpretation include a dispute relating to any person, considering the scheme and the objects of the Act, all disputes are not industrial disputes and that a dispute becomes an industrial dispute where the person in respect of whom it is raised is one in whose employment, non-employment, terms of employment

or conditions of labour the parties to the dispute have a direct or substantial interest. The question, therefore, which would arise in cases where the existence of the industrial dispute is challenged, is whether there was between the parties to the reference, i.e., the employer and his workmen, an industrial dispute. The parties to the industrial dispute are obviously the parties to the reference, and therefore, the dispute must be an industrial dispute between such parties. It follows, therefore, that though a dispute may initially be an individual dispute, the workmen may make that dispute as their own, that is to say, espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment or conditions of work of the concerned workman. This premise pre-supposes that though at the date when the cause of the dispute arises that dispute in an individual dispute such a dispute can become an industrial dispute if it is espoused by the workmen or a substantial section of them after the cause of the dispute, e.g., dismissal, has taken place. It may be that at the date of such dismissal there is no union or that the workmen are not sufficiently organised to take up the cause of the concerned workman and no espousal for that or any other reason takes place at the time when such cause occurs. But that cannot mean that because there was no such union in existence on that date, the dispute cannot become an industrial one if it is taken up later on by the union or by a substantial section of the workmen. If it is insisted that the concerned workman must be a member of the union at the date of his dismissal, the result would be that if at that period of time there is no union in that particular industry and it comes into existence later on then the dismissal of such a workman can never be an industrial dispute although the other workmen have a community of interest in the matter of his dismissal, and the cause for which or the manner in which his dismissal is brought about directly and substantially affects the other workmen. The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of Dimakuchi Tea Estate (1958 SCR 1156) is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. The parties to the reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman. It must follow that the existence of such an interest, evidenced by the espousal by them of the cause, must be at the date when the reference is made and not necessarily at the date when the cause occurs, otherwise, as aforesaid, in some cases a dispute which was originally an individual one cannot become an industrial dispute. Further the community, of interest dose not depend on whether the concerned workman was a member or not at the date when the cause occurred, for without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it.

6. Any controversy on the question as to whether it is necessary for a concerned workman to be a member of the union which has espoused his cause at the time when that cause arose has been finally set at rest by the decision in Bombay Union of Journalists v. The "Hindu", Bombay (1962) 3 SCR 893) where this Court laid down that the test whether an individual dispute got converted into an industrial dispute depended on whether at the date of the reference the dispute was taken up and supported by the union of workmen of the employer against whom the dispute was raised by an individual workman or by an ]appreciable number of such workmen. (See also Workmen v. M/s. Dharampal Premchand (1965) 3 SCR 394) and Workmen of India Express (P) Ltd. v. The Management (1969) 1 SCC 228). The argument, therefore, that the reference in this case was not competent on the ground that the concerned workman was not a member of the union at the date when the cause giving rise to the dispute arose, and that, therefore, the union could not have espoused the dispute the convert it into an industrial dispute is not correct and cannot be upheld.

7. The next question is whether the expression "at any time" in Section 4 (k) means what its literal meaning connotes, or whether in the context in which it is used it has any limitations. Counsel for the company argued that the concerned workman was admittedly not a member of the respondent union in the beginning of 1959 when the State Government refused to make the reference, that he became a member of the respondent union in July 1962, that it was thereafter that the respondent union revived the said dispute which had ceased to be alive after the Government's said refusal and that it was at the instance of the union that the Government later on changed its mind and in August 1963 agreed to make the reference. The contention was that the Government, having once declined to refer the dispute, could not change its mind after arose and that though the expression "at any time" does not apparently signify any limit, it must be construed to mean that once the Government had refused to make the reference after considering the matter and the employer thereupon had been led to believe that the dispute was not to be agitated in a tribunal and had consequently made his own arrangement, the Government cannot, on a further agitation by the union, take a somersault and decide to refer it for adjudication. It was argued that if it were so, it would mean that a workman, who after termination of his service, has already obtained another employment, can still go to the union, become its member and ask the union to agitate the dispute by espousing it. Such an action, if permitted, would cause dislocation in the industry as when the employer has in the meantime made his own arrangement by appointing a substitute in place of the dismissed workman on finding that the latter had already found other employment. The legislature, the argument proceeded, could not, therefore, have used the words "at any time" to mean after any length of time.

8. From the words used in Section 4(k) of the Act there can be no doubt that the legislature has left the question of making or refusing to make a reference for adjudication to the discretion of the Government. But the discretion is neither unfettered nor arbitrary for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for adjudication. No reference thus can be made unless at the time when the Government decides to make it an industrial dispute between the employer and his employees either exists or is apprehended. Therefore, the expression "at any time", though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can "at any time", i.e., even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence.

9. In the State of Madras v. C. P. Sarathy (1953 SCR 334 at 346) this Court held on construction of Section 10 (1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and dispute may be resolved through a judicial process as speedily as possible. In the light of the nature of the function of the Government and the object for which the power is conferred on it, it

would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute. (Cf. Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal ((1968) 1 LLJ 834, 839). Such a view has been taken by the High Courts of Andhra Pradesh, Madras, Allahabad, Rajasthan, Punjab and Madhya Pradesh. [See Gurumurthi (G) v. Ramulu (K) ((1958) 1 LLJ 20), Vasudeva Rao v. State of Mysore, ((1963) 2 LLJ 717) Rawalpindi Victory Transport Co. (P) Ltd. v. State of Punjab, ((1964) 1 LLJ 644) Champion Cycle Industries v. State of U.P., ((1964) 1 LLJ 724) Goodyear (India) Ltd., Jaipur v. Industrial Tribunal ((1968) 2 LLJ 682) and Rewa Coalfields Ltd. v. Industrial Tribunal, Jabalpur (AIR 1969 MP 174)]. The reason given in these decisions is that the function of the Government either under Section 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as res judicata applicable to judicial acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief, does not affect the jurisdiction of the Government to make the reference.

10. It appears that there was a controversy before the High Court whether there was at all any espousal of the dispute by the respondent-union, and, if there was, at what stage. The High Court, therefore, got produced before it the record before the conciliation officer. Strictly speaking, in a proceeding for certiorari under Article 226, the record which would be produced before the High Court would be that of the Tribunal whose order is under challenge. But if the High Court got produced in the interests of justice the file of the conciliation officer which alone could show whether there was espousal by the union or not, no one could reasonably object to the High Court calling for that record for the purpose of ascertaining whether the stand of the union that it had taken up the cause of Respondent 3 was correct or not.

11. As the High Court has said, that file showed that on July 2, 1957 one Har Sahai Singh, the then president of the union, had complained to the Regional Conciliation Officer against the termination of service of respondent 3 and following that complaint, respondent 3 had filed a written statement dated September 4, 1957 which was countersigned by the said Har Sahai Singh in his capacity as the president and presumably, therefore, on behalf of the union. The record also indicated that on that very day, i.e., September 4, 1957, the conciliation officer recorded an order that the conciliation proceedings could not be proceeded with as "no authorised agent" of the union appeared before him. Presumably, the conciliation officer in course of time must have made his failure report. From these facts the following conclusions must emerge : (1) that the conciliation officer had taken cognisance of the dispute, (2) that he took that dispute as having been espoused by the union through its president, (3) that thereupon he fixed September 4, 1957 as the date for holding the conciliation proceedings and informed the parties to attend before him, and (4) that as "no authorised agent" on behalf of the union appeared before him, he recorded that the conciliation proceedings could not go

on. These facts clearly go to show that the then president of the union had not made the said complaint in his personal capacity but as the president representing the union. This is borne out to a certain extent by a subsequent resolution of the executive body of the union dated February 28, 1963 which recites that the executive committee of the union will continue to take up the cause of respondent 3 as it had been so far doing, But Mr. Dapthary emphasised that this resolution did not mean that the union had taken up the cause of respondent 3 as its own since the resolution uses the word 'pairavi' and not espousing or sponsoring the workman's cause. Pairavi, according to him, means acting as the agent of a party to a proceeding and not being a party to the proceeding which would be the position had the union taken up the complaint as its own. In our view we need not look at the said resolution in so narrow a manner, for, the facts taken as a whole indicate that the union had in fact taken up the cause of the workman. The president evidently could not have countersigned the written statement of the concerned workman and the conciliation officer could not have given a notice to the union to appear before him and could not have recorded that he did not proceed with the conciliation proceedings as no authorised agent of the union appeared before him unless every one understood that the union had taken up the cause of the workman. The notice dated August 2, 1957 issued by the conciliation officer after the union president had lodged his said complaint is on record and shows that it was issued to the management and the union calling upon both of them to appoint their respective representatives on the conciliation board as required by the Government order dated July 14, 1954. It also shows that the officer treated the dispute as having been espoused by the union as the notice recites the dispute as an industrial dispute.

12. The subsequent facts would seem to indicate that the Government declined to make the reference presumably because of the report of the conciliation officer that in spite of the said notice no authorised agent of the union had appeared before him and therefore no conciliation had been possible. As already stated, a writ petition to compel the Government to make the reference proved unsuccessful. It may be that the respondent-union may have decided to press for the reference after the concerned workman became its member. That fact, however, is irrelevant for the purposes of the jurisdiction of the Government under Section 4(k). One fact, however, is clear that the respondent union carried on correspondence with the Labour Ministry and also passed the said resolution dated February 28, 1963. The correspondence which was carried on from about November 1962 shows that the union pressed the Government to make the reference and the Government ultimately made the reference in August 1963. That correspondence further shows that the Government at one stage pointed out that the union had in 1957 failed to appear before the conciliation officer although it had espoused the dispute and that that fact had influenced the Government's refusal then to refer the dispute for adjudication. The union pointed out (1) that at the time when the said complaint was lodged in 1957 before the conciliation officer the union's president was one Varma, (2) that in the meantime elections for the union's office bearers took place when the said Har Sahai Choudhury and one Girish Chandra Bharati were elected president and working president respectively, (3) that the abovementioned individuals appeared before the conciliation officer, but the said Varma did not, as he had failed in the elections, (4) that disputes arose about the said elections and the Registrar of the Trade Unions refused to recognise the new office bearers, and (5) that the conciliation officer also refused to recognise the said Har Sahai Choudhury and Bharati as the duly elected president and working president, and therefore, although both of them attended the meeting fixed by the officer, the latter recorded that no authorised agent of the union had appeared before him and no conciliation, therefore, could be arrived at. It thus appears from the correspondence that following the espousal of the said dispute by the union, two of the office bearers of the union did appear before the conciliation officer but were not recognised as the authorised agents of the union on account of the said disputes about the elections. If the Government, thereof, had refused then to

make the reference on the ground that though the union had espoused the workman's cause it had not cared to appear at the conciliation proceedings, the Government's decision refusing to make the reference was clearly on misapprehension. If the Government subsequently found that its earlier decision was based on such a misapprehension and on facts brought to its notice it reconsiders the matter and decides to make the reference it is difficult to say that it exercised the discretion conferred on it by Section 4(k) in any inappropriate manner. But that does not mean that if Section 4(k) is construed to mean that the Government can reconsider its earlier decision, such a construction would result in unions inducing workmen to join them as members or to shift their membership from one to the other rival union on promises by such union to revive disputes which are already dead or forgotten and then press the Government to make a reference in relation to them. There is no reason to think that the Government would not consider the matter properly or allow itself to be stamped into making references in cases of old or stale disputes or reviving such disputes on the pressure on unions.

13. It is true that where a Government reconsiders its previous decision and decides to make the reference, such a decision might cause inconvenience to the employer because the employer in the meantime might have acted on the behalf that there would be no proceedings by way of adjudication of the dispute between him and his workmen. Such a consideration would, we should think, be taken into account by the Government whenever, in exercise of its discretion, it decides to reopen its previous decision as also the time which has lapsed between its earlier decision and the date when it decides to reconsider it. These are matters which the Government would have to take into account while deciding whether it should reopen its former decision in the interest of justice and industrial peace but have nothing to do with the jurisdiction under Section 4(k) of the Act. Whether the intervening period may be short or long would necessarily depend upon the facts and circumstances of each case, and, therefore, in construing the expression "at any time" in Section 4(k) it would be impossible to lay down any limits to it.

14. In the present case though nearly four years had gone by since the earlier decision not to make the reference, if the Government was satisfied that its earlier decision had been arrived at on a misapprehension of facts, and therefore, required its reconsideration, neither its decision to do so nor its determination to make the reference can be challenged on the ground of want of power. The fact that the dispute between the concerned workman and the management had become an industrial dispute by its having been espoused by the union since 1957 cannot be disputed. The fact that the workman was then not a member of the union does not preclude or negative the existence of the community of interest nor can it disable the other workmen through their union from making that dispute their own. The fact that the Government refused them to exercise its power cannot mean that the dispute had ended or was in any manner resolved. In the absence of any material it is not possible to say that with the refusal of the Government then and the dismissal of the writ petition by the High Court in March 1959 the dispute, which was already an industrial dispute, had ceased to subsist or that on respondent 3 joining the union in July 1962 the union revived a dispute which was already dead and not in existence. His becoming a member in July 1962 was as immaterial to the power of the Government under Section 4(k) as the fact of his not being a member at the time when his cause was espoused in 1957 by the union and the dispute becoming thereupon an industrial dispute. The question of his membership, therefore, has to be kept apart from the right of the other workmen to espouse his cause and the power of the Government under Section 4(k). It may be that his becoming a member in 1962 may have been the cause of the union's subsequent efforts to persuade the Government to reconsider its decision and make a reference on proper facts being placed before it and its earlier misapprehensions removed. But that again has nothing to do with the jurisdiction of the Government under Section 4(k) of the Act.

15. In our view, the appellant-company fails on both the points and its appeal against the High Court's decision becomes unsustainable. Accordingly, we dismiss the appeal with costs.

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