CALCUTTA HIGH COURT

Bengal Club Ltd

Vs.

Santi Ranjan Somaddar

Matter No. 103 of 1955

(Sinha, J.)

13.06.1956

ORDER

Sinha, J.

1. The facts in this case are shortly as follows : The petitioner is a company incorporated, with liability limited by guarantee, under the Indian Companies Act. The company maintains a Club For the benefit of its members at premises No. 33 Chowrin-ghee Road in the town of Calcutta. Respondent 1 Santi Ranjan Somaddar was employed by the petitioner since 1-2-1947 as an assistant bill clerk. It is. stated that he frequently absented himself from, duty, so much so that during his seven years of employment he was absent for a total of almost three years. It is further stated that other office clerks have from time to time requested the Secretary of the Club to take some steps to find another employee or make some arrangements For the work to be done during the absence of respondent 1, the burden of which fell upon them. On or about 9-6-1954 he absented himself from duty without any leave or authority and continued to absent himself. By letters dated 25-6-1954 and 8-7-1954 the petitioner required respondent 1 to resume his duties but he failed to do so. He also failed to furnish a satisfactory explanation for his long and obstinate absence, it appears from the correspondence that at the time of taking leave, all the information that he gave to the authorities of the Club was a short letter dated 9-6-1954 stating that he had a 'very urgent piece of business.' It is stated in the affidavit filed by the said respondent that his mother became ill and that is why he had to take leave. It is clear that the authorities concerned did not believe in this excuse, as it was not the first time that respondent 1 had been absenting himself without leave. For example, in January 1954 he had absented himself without any leave whatsoever for ten days. In fact, it appears that he habitually did so, to the great inconvenience of his employers and fellow employees. On or about 14-7-1954 the Secretary of the Club informed respondent 1 that the Committee of the Club had decided in the interest of the Club and its staff to dismiss him from service, with effect from 14-7-1954 for insubordination and for continued and determined unauthorized absence. The Secretary pointed out that the Committee was not satisfied with the excuses shown, for not complying with the orders made by the Club authorities, as also with his past conduct and service. Respondent 1 protested, and it seems that the Government of West Bengal, professing to act in exercise of power conferred by the Industrial Disputes Act, 1947 (hereinafter called 'the Act') referred the

dispute between the petitioner and the said respondent for adjudication to the Seventh Industrial Tribunal, Calcutta (hereinafter called 'the tribunal'). The reference was made by an order dated 2-5-1955 and the dispute referred was as follows :-

> "Whether termination of service of Shree Santo Ranjan Somaddar was justified ? - To what relief is he entitled ?"

2. It might be mentioned here that the cause of respondent 2 has not been taken up by any trade union or by the general body of workmen employed by the petitioner. In fact, it would appear from the facts stated above, that his fellow workers protested at his continued absence and demanded that the Club should do something in respect of the same, so that their own burden would not be unfairly increased. Respondent 2, the Seventh Industrial Tribunal Calcutta, took up the reference and was proceeding with it. On or about 9-6-1955 the petitioner filed his defense objecting to the jurisdiction of the said respondent. It is alleged that the said respondent is not willing to accede to the petitioner's contention and intends to proceed with the reference and to make the award. This Rule was issued on 14-6-1955 calling upon the respondents to show cause why a writ in the nature of prohibition should not be issued prohibiting the said respondent from entertaining the proceeding and or why a writ in the nature of certiorari should not be made quashing the proceedings and or why a writ in the nature of mandamus should not be issued directing the respondent to forbear from giving effect to the said order of reference. Further proceedings have been stayed pending the disposal of this Rule.

3. Mr. Ginwalla appearing on behalf of the petitioner has taken two points. The first point is that the dispute is not an industrial dispute because the petitioner company cannot be said to be carrying on an industry. The second point is that in any event. It cannot be an industrial dispute, being a dispute between the company and an individual workman. I shall now deal with the first point. The word Indus-trial dispute' is defined in Section 2(k) of the Act and means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Section 2(s) defines a 'Workman' as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. According to Section 2(j), 'Industry' means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

4. It is obvious that the definition of the word 'Industry' is very wide. A similar question arose before the Court of Appeal of this High Court in, In the Matter of the New Club Ltd. and and judgment dated 24-9-1948 in the consolidated appeals, *The Indian Paper Pulp Co. Ltd. v. The Indian Pulp Workers*' Union and the other causes), Harries, C.J. said as follows :-

> "It will be seen that in the definition of an 'Industrial dispute' there is a reference to workmen, and in the definition of 'workmen' there is a reference to industry and in the definition of 'Industry' there is again a reference back to workmen.
>
> It is argued that as the workmen in this case are not employed in any industry, an Industrial Tribunal can have no jurisdiction over the dispute.
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> Three of the Clubs are proprietary Clubs owned by a limited company; the other five

> Clubs are unincorporated bodies.
> It will be observed that the term 'Industry' is defined in the widest possible term. But it is urged that the company owning a Club or the members of a non-proprietary Club carried on no business, trade,, undertaking, manufacture or calling. It appears to me that the company which owned the New Club, the Saturday Club and the 300 Club do carry on a business. Carrying on a Club of this kind is certainly business or undertaking. Similarly, the non-proprietary Clubs may be said to carry on a business or undertaking. All these Clubs provide facilities for members. Amongst other things they carry on a big catering, business and also a business of licensed alcohol. Mr. Meyer on behalf of the petitioner contended that non-proprietary Clubs cannot carry on a business because a sale of a meal or a drink to a particular person is not a sale in the true sense of the word. That argument cannot, of course, apply to the proprietary Clubs, but even if such transactions are not sale in the legal sense of the word, nevertheless a Club is an undertaking or business providing various facilities and amenities. The Clubs provide food and', drink and may provide accommodation. It seems to me that a proprietary Club and the managing committee of a non-proprietary Club do carry on a business very similar to a business carried on by a licensed hotel or eating house. That being so, the undertaking is regarded as an industry as that term is used in the Act. Therefore a dispute between such Clubs and their workmen would be an industrial dispute which could be referred to adjudication under the Industrial Dispute Act."

5. Harries, C.J. had certainly more knowledge of clubs of this description than I have, and his decision is entitled to great respect. Chakravartti, J. (as he then was) also held that there could be no question at all that proprietary Clubs carried on business and were therefore industries. The petitioner, of course, is a proprietary Club.

6. In the Supreme Court decision *D.N. Banerji v. P.R. Mukherjee*[1], it has been pointed out by Aiyer, J., that in the ordinary or non-technical sense according to what is understood by n man in the street, industry or business means an undertaking where capital and labour cooperate with each other For the purpose of producing wealth in the shape of goods, machines, tools etc. and for making profits. It is also clear that every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have to record for instance the rights and duties of master and servant, or of the Government and its Secretariat, or the members of the medical profession working in a hospital. It would be regarded as absurd to think so. At any rate, the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible.

> "There is nothing however," said the learned Judge, "to prevent a Statute from giving the word. 'Industry' and the words 'Industrial dispute' a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and bring about in the interest of industrial peace and economy, a fair and
> satisfactory adjustment of relation between employer and workman in a varied

[1] AIR 1953 SC 58

> field of activity. It is obvious that the limited concept of what an industry meant in earlier times must now yield place to an enormously wider concept so as to take in various and varied forms of industry."

In my opinion, it must be held that the petitioner carries on an 'Industry' within the meaning of |the Industrial Disputes Act.

7. I now come to the second point. The remarks made by Aiyar, J. quoted above, serve as a fitting introduction to the point under consideration. The question is as to whether the dismissal on an individual workman by his employer, is an industrial dispute or not. As pointed out above, the concept of an Industry' as delineated in the Industrial Disputes Act is wider than the ordinary concept of laymen. Bearing this in mind, let us see what the learned Judge says about the meaning of the words 'Industrial dispute' :-

> "The words 'Industrial dispute' convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and; employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest such as wages, bonuses, allowances, pensions, provident funds, number of workmen, S, hours per week, holiday and so on. Even with reference to business that is carried on, we would hardly think of saying that there is an industrial dispute where an employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to modern conditions of society where capital and labour have organised themselves into groups For the purpose of fighting their dispute and settling them on the basis of the theory that in unity is strength, and collective bargaining has come to stay, a single employee's case may develop into an industrial dispute when, as often happens, it is taken up by a trade union of which he is a member and there is concerted demand by employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise in such a manner as to cover the industry as a whole in a case where grievance, if any, passes from the region of individual complaint, into a general complaint on behalf of all the workers in the industry. Such widespread extension of labor unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between a particular employer and workman."

8. In the present case the dispute is entirely, one between the petitioner and respondent 1. It has, not been taken up by any Union or any other workman. On the contrary, the fellow-workmen of the said respondent have bitterly complained about his conduct and wanted him to be removed. The question is whether in spite of such facts, the dispute can be called an 'Industrial dispute'. Aiyer, J. has pointed out that the words 'Industrial dispute' in the Act have a wider connotation then the popular view. But the learned Judge points out that normally or fundamentally dismissal of an individual workman by the employer is not an industrial dispute but might 'develop into

one', if the other workmen or the Union of workmen take it up. The object of the Act is to ensure* industrial harmony. A dispute between an employer and an individual workman, does not or cannot be said to effectively disturb that harmony. It is only when workmen resort to collective bargaining or are afflicted by a common unrest, can it be said that industrial harmony has been or may be disturbed. In other words, an individual dispute is not an industrial dispute as such, but may have potentialities of developing into an industrial dispute. Take the case of a workman who has been dismissed because he has stolen goods of the employer. The other employees may look upon his action with great disgust. They might all wish that the blacksheep amongst them should be eliminated. To say that even in such a case, the dispute is an industrial dispute, is to shut our eyes to the very concept which underlies the use of the word in the Act. I have, of course, given an extreme example, but it is with such examples that we must test a general definition. If an industrial dispute is to include individual disputes, it must include all individual disputes. In my opinion, it does not. It only includes such disputes as have been taken up by the Union or the general body of workmen.

9. I have now proceed to consider the decided cases upon this point. *J. Chowdhury v. M.C. Banerjee[2]',* was a case where the editor of the Calcutta Weekly Notes. a well-known legal journal, discharged a Lino operator from service on the ground that he was negligent and fell into arrears and that he used to tamper with the machines. The discharged operator took proceedings under the Industrial Disputes Act. Mr. Chowdhury thereupon made an application to this Court under Article 226. It was held by Mitter, J. that the dispute was not an industrial dispute, as it was admittedly a dispute between the employer on one side and an individual employee on the other.

10. This case was followed by Bose, J. in - '*Bilash Chandra v. Balmer Lawrie and Co[3].',* holding that an industrial dispute between a single workman and his employer is not an industrial dispute.

11. In - '*Birla Brothers Ltd. v. Modak[4]',* a Division Bench presided by Harries, C.J., it was held that a reference of a dispute as to dismissal between Messrs. Biria Brothers Ltd. and "Their employees as represented by the Bula Brothers Union", was a reference regarding an industrial dispute.

12. In - '*Western India Automobile Association v. Industrial Tribunal Bombay[5]',* the Federal Court held that a trade Union could take up the case of any workman.

13. In - '*Kandan Textile Ltd. v. Industrial Tribunal (1), Madras[6]',* Rajamannar, C.J. suggested that the intention of the Legislature may be expressed in a more clear and unambiguous language than it was at present, to decide whether an individual dispute between an employee or employees on one side and the employer on the other side was an industrial dispute even when a substantial Section of the entire establishment or a recognized part of the establishment does not take up his or their cause. In the same case, however, Mack, J. was quite emphatic upon this point. He said as follows :

> "The Industrial Disputes Act was never intended to provide a machinery for redress by a dismissed workman or even by a group of workmen who may be simultaneously punished or dismissed ....

[2]55 Cal WN 256

[3]57 Cal WN 169 : (AIR 1953 Cal 613)

[4] ILR (1848) 2 Cal 209

[5](1949) FCR 321 : (AIR 1949 FC 111)

[6] AIR 1951 Mad 616

If such a dismissal however even of an individual workman is taken up by a Workers Union or a Substantial Body of Workman who continue in employ-moat and espouse his cause then an industrial dispute may arise. ...... The greatest caution should be exercised by Government before referring any point for determination for a tribunal in arriving at a decision, whether it is in law an industrial dispute or not. Nothing can be more calculated to undermine the morale and discipline of labour than illegal and unnecessary references of this kind which put a premium on mischievous insubordination and discourage and undermine the loyalty of the great majority of workmen who in this concern obviously are quite contented and have no interest in the reinstatement of the other workmen including the dismissed Sundaram."

The learned Judge referred to Section 10(2) of the Act, which requires that before making a reference Government must be satisfied that the persons applying represent the 'majority of each party'.

14. '*Manager, United Commercial Bank Ltd., Mathurai v. Commissioner of Labour, Madras*[7]*'*, was really a case under the Madras Shops and Establishments Act (Madras Act 36 of 1947). In comparing the provisions thereof with the provisions of the Industrial Disputes Act 1947, Rajamannar, C.J. said as follows :

"Though in one sense Section 41(2) of the Madras Act concerns a dispute between an employee and an employer, an individual dispute falling under it would not by itself be an industrial dispute falling within the scope of the Industrial Disputes Act. It may be that the dismissal of even one workman can become the subject of an industrial dispute, but then it is no I longer an individual dispute between the dismissed workman and the employer only; it becomes a dispute between the workmen on the one hand the employment on the other." In the same case Sastri J. said :
"A dismissed employee might question the propriety of his dismissal even though the other employees either approve of such dismissal or are indifferent to it. In such a case it must be held that the dispute is only an individual dispute between the employer and the employee affected by the dismissal and not an 'industrial dispute* under Act 14 of 1947."
In - '*New India Assurance Co. Ltd. v. The Central Government Industrial Tribunal, Dhanbad*[8]*'*, a point was taken that under Section 13, the General Clauses Act, words in the singular shall include the plural and vice versa unless there was anything repugnant in the subject or context. It was argued that in Section 2(k) of, the Act, the word 'workmen' would include the singular so that a dispute between an employer and a single workman would be an industrial dispute as defined in the Act. Ramaswami, J. said as follows :
"Section 13, General Clauses Act no doubt enacts a general rule of construction that words in the singular shall include the plural and vice versa but the rule is subject to the proviso that there shall be nothing repugnanted such a construction in the subject or context of the Act which is to be construed. In the present case the proper approach is to examine Section 2(k) in the setting and the context and other important provisions of the

Industrial Disputes Act."

[7] AIR 1951 Mad 141

[8] AIR 1953 Pat 321

The learned Judge then examines Sections 10(2), 10(3), 18 and 36 of the Act and concludes as follows :

> "In the context of these important provisions of the Industrial Disputes Act it is clear that the 'industrial dispute' referred to and defined in Section 2(k) must be construed to mean not a dispute between an individual workman and the management but a dispute which though it may originate in an action with regard to an individual workman has developed into a dispute in which the majority of the workmen in the establishment are interested."

This would be an appropriate place to consider the English case, - '*R. v. National Arbitration Tribunal, Ex parte South Shields Corporation*[9]', upon which the learned counsel For the respondents, principally relied. The dispute there was between the South Shields Corporation, a municipal body, and its town clerk. The town clerk claimed that the Corporation should apply to him the recommendations of the joint negotiating committee for town clerks and district council clerks in relation to conditions of service, while the Corporation refused to alter the conditions upon which he was originally appointed. A reference was made under the 'Conditions of Employment and National Arbitration Order 1940' made under the Defence General Regulations 1939. By Article 7 of the Order, a 'trade dispute' was denned as ". ....any dispute or difference between employers and workmen, or between workmen and workmen........" The Order of 1940 was revoked by the Industrial Disputes Order, 1951. The question arose as to whether the dispute was an 'Industrial Dispute'. Lord Goddard held that if the matter was governed by the 1940 Order, then by Section 1 (1) of the 'Interpretation Act 1889',..... "Unless the contrary intention appears.... (b) words in the singular shall include the plural and words in the plural shall include the singular". The learned Judge stated as follows :

> "Prima facie, one would suppose that the intention of the regulation was to deal with disputes which might arise between employers and a body of workmen which, if not settled, might lead to the interruption of work by strikes or lockouts and by the Order of 1940 the National Arbitration Tribunal was set up to whom the minister could refer disputes .... It cannot, we think, be contended that the wording of the Order of 1940 indicates any intention to exclude the application of the words of Section 1 of the Interpretation Act set out above. We therefore conclude that a dispute between one employer and one workman was within the order of 1940."

15. With great respect, I think that the above extracts clearly show the inconsistency in the reasoning. The learned Judge concedes that prima facie, the regulation shows au intention of dealing with collective disputes. The Order of 1940 was made under the regulation (The Defense General Regulations 1939). Hence, it is not at all clear why it could not be contended that the wordings of the Order of 1940 intended to exclude the application of the words of Section 1 of the Interpretation Act 1889 so as to exclude individual disputes. In my opinion, it is clear that it was so intended. The definition of trade dispute in the Order of 1940 is analogous to the definition in our Trade Disputes Act 1947, and Section 13, General Clauses Act might be said to

correspond to Section 1 of the Interpretation Act 1889. I respectfully agree with Ramaswami, J. AIR 1953 Patna 321,

9(1951) 2 All England Reporter 828

that in the context, it is quite clear that Section 13, General Clauses Act was not applicable, so as to make a dispute between an employer and a single employee, a trade dispute. Such an interpretation would be repugnant in the context of the provisions of the Act.

16. Lord Goddard placed reliance on the observation of Lord Atkinson in - '*Conway v. Wade*[10]', to the following effect :

> "In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side, and an employer on the other. . . ."

As pointed out by Rajamannar, C.J. in AIR 1951 Madras 616 at p. 622, in the context in which these words occur, they did not mean anything more than that there could not tie a trade dispute when one of the parties was an outsider, that is neither a workman nor an employer.

17. I think that the correct position has been laid down by Issacs, J. in - '*George Hudson Ltd. v. Australian Timber Workers Union*[11]', The learned Judge says :

> "The very nature of an 'industrial dispute' as distinguished from an individual dispute, is to obtain new industrial conditions, not merely For the specific individuals working from the specific individuals then employing them, and not For the moment only, but For the class of employees from the class of employers limited by the ambit of disturbance or dislocation of public services which has arisen or which might arise if the demand were not acceded to and observed for a period really indefinite. . . . It is a battle by the claimants, not for themselves alone, and not against the respondents alone, but by the claimants as far as they represent their class, against the respondents as far as they represent their class." The only difference is that disputes other than in public services, might now develop into industrial disputes.

18. Reference may also be made to - '*Jumbunne Coal Mine No Liability v. Victorian 9oal Miners Association*[12]', and - '*Standard Vacuum Oil Co. v. Industrial Tribunal, Ernakulam*[13]',

19. In my opinion therefore, where an individual workman is dismissed and his dismissal is not objected to by any Union of Workmen or by a majority of his fellow-workmen, that is an individual dispute between the employer and an individual workman, and is not an 'Industrial dispute' and never developed into one. The order of reference dated 2-5-1955 is therefore wholly incompetent and the respondent tribunal has no jurisdiction to entertain it.

20. I must here notice a point taken by the respondents. It is argued that the tribunal derives its jurisdiction from the order of reference, and until the order of reference is avoided, it cannot be deprived of jurisdiction. Since the making of an order is an administrative act, it is argued that the only way left is to issue a writ in the nature of

[10]1909 AC 506 [12]6 Com W LR 309

[11]32 Com W LR 413 at p. 441 [13] AIR 1952 Tranvancore Cochin 249

mandamus directing Government to forbear from acting upon the order, and that no such writ can be issued because there has been no demand for justice or its denial. I do not feel any difficulty upon this point. Under Section 7, Industrial Disputes Act, the Government may constitute an Industrial Tribunal For the adjudication of industrial disputes. It cannot constitute the tribunal for any other purpose, nor can the tribunal so constituted try any dispute other than an industrial dispute. It is true that in a given case, the tribunal gets seisin of the matter by virtue of an order of reference made by Government under Section 10 of the Act. But it must not be forgotten that Section 10 is also limited in scope. Under Section 10, Government can only make a reference if in its opinion any industrial dispute exists or is apprehended. If no industrial dispute exists or is apprehended, Government has no power to refer to the tribunal and the tribunal has no power to adjudicate upon the alleged dispute so referred. In other words, it is for Government to form an opinion as to whether an industrial dispute exists or is apprehended. But what is an industrial dispute is an objective fact, and Government cannot turn a dispute which is not an industrial dispute into an industrial dispute by merely making an order of reference. Nor does the tribunal derive jurisdiction merely by the fact that there is a reference. The condition precedent must be satisfied, namely that it must relate to an industrial dispute which in the opinion of Government exists or is apprehended. If the dispute itself is not and cannot be an industrial dispute, the Government cannot act under Section 10, and the tribunal cannot adjudicate upon it. The tribunal has the power to examine its own jurisdiction in a particular case : - '*State of Madras v. C. Partha Sarathy*[14]', Where the point is raised, it is its duty to do so, before entering into the reference. Since I have held that the dispute in this case is not an industrial dispute, there is no difficulty in issuing a writ in the nature of prohibition or certiorari upon the tribunal. Nor, in my opinion, is there any difficulty in issuing a writ in the nature of mandamus upon the Government. It is true that there must be a demand for justice and its denial before entertaining an application for a writ in the nature of mandamus. But where it would be futile to make such a demand, it would not be a bar to relief. In - '*Commissioner of Police v. Gordhandas*[15]', the Commissioner of Police entirely washed his hands saying that he had acted under orders of Government. Bose, J. said as follows :

> "It is true that the actual demand was not made to the Commissioner nor was the denial by him, but he clearly washed his hands of the matter by his letter of 3/4-12-1947 and referred the petitioner to Government under whose order, he said he was acting. The demand made to Government and the denial by them were therefore in substance a demand made to the Commissioner and a denial by him." Here the Government had already made an order of reference and the tribunal is proceeding with the matter. The petitioner filed his objection before the tribunal. I think that the law is satisfied.

21. The result is that this rule must be made absolute. There will be issued a writ in the nature of certiorari quashing the proceedings initiated by the order of reference dated 2-5-1955 and there will be issued a writ in the nature of prohibition, prohibiting respondent 2, the Seventh Industrial Tribunal Calcutta from proceeding with the same and there Will be issued a writ in the nature of mandamus upon all the respondents directing them to forbear from acting upon the order of reference dated 2-5-1955. This will be without

[14] AIR 1953 SC 53
[15] AIR 1952 SC 16

prejudice to any other rights that the parties may have in respect of the dismissal of respondent 1 by the petitioner.

22. There will be no order as to costs.

Rule made absolute.