KERALA HIGH COURT

Shamsuddin

Vs

State of Kerala

(S.V Pillai, J.)

21.01.1960

JUDGMENT

S. Velu Pillai, J.

1. The petitioner, the employer, is a sub-agent of the Standard Vacuum Oil Company in Quilon, and he terminated the employment o three workmen on October 3, 1956. On October 19, 1956, they enrolled themselves as members of a labour Union called "The Quilon Commercial Staff Association", hereafter referred to as the Union, which took up their cause and raised a dispute which was referred by the first respondent, the Government, of the State of Kerala, to the second respondent, the Industsial Tribunal, to be referred to as the Tribunal, as "the Industrial Dispute between the management of Standard Vacuum Oil Company, Sub-Agency, Quilon, represented by tile Sub-Agent, and the workmen of the above concern represented by the Quilon Commercial Staff Association". The reference concerned two issues, the first of which related to the termination o the employment of the three workmen and the second, to their claim for bonus, for the years 1953 to 1956. At an early stage of the proceedings before the Tribunal the workmen were allowed, at their request, to be represented by the Quilon Commercial and Industrial Employees' Association, of which the third respondent is the President, instead of by the Union. Though a ground was taken in this petition of this change in representation, no point was made of it before me, at the hearing. By the award, Ext. P-l the Tribunal has held, that the termination of employment was not justified, and allowed compensation to each of the workmen at rates specified, and also two months' bonus for the years 1954 and 1955 to two of them. This petition is under Article 226, and is to quash Ext. P1. Three grounds alone were pressed before me on behalf of the petitioner, firstly, that the finding in Ext. PI, that the employment was terminated without justifiable reason is perverse, secondly that there was no industrial dispute to be referred by the first respondent, as the three workmen, whose cause was espoused by the Union, became its members only after their employment had ceased, and thirdly, that no bonus was payable to any of the workmen.

2. The first concerned chiefly the interpretation of Exts. M2 and M14, two letters, which, in my opinion, is not conclusive; there was other evidence for the Tribunal to act upon, in coming to its conclusion. I therefore, decline to accept the first ground as valid. On the second, the learned Government Pleader who appeared for the first respondent and the Tribunal, took a preliminary objection, that by the failure of the petitioner to object before the Tribunal to its jurisdiction, he is

now precluded from doing so. The petitioner has filed a supplementary affidavit explaining, that "it was only after proceedings before the Tribunal were completed, that I (the petitioner) got definite information, that the three workers were not members of any trade union at the time of the dispute or the discharge", and his learned counsel contended, that the petitioner was even misled by Ext. M4, a communication addressed by the Union, referring to these workmen as its members. The allegation in the affidavit in reply is but a bare denial of the lack of knowledge of the petitioner pleaded by him. Far from asserting in it, that they were in fact members of the Union the hearing of this case was itself proceeded with as if they were not members at the time their employment was terminated. In this view, the objection as to jurisdiction must be regarded as available to the petitioner.

3. This objection was developed before me in the following manner. Notwithstanding the definition of 'industrial dispute' in Section 2(k) of the Industrial Disputes Act, 1947, referred to hereinafter as the Act, it may now be taken as settled law, that an individual dispute between an employer and a workman, is not per se an industrial dispute, but may develop into one, if it is taken up by the labour Union of which the workman is a member, or by the body of the remaining workmen in the establishment, but that in order to ensure this result, it is an essential condition, that the workman must have been a member of the Union on the date on which the individual dispute had its origin, or in the case of workmen who make common cause with him, they are not themselves involved in such individual disputes with their em- ployer. The learned Government Pleader agreed with the first part of the above proposition, but maintained, that there is no reason or principle for introducing into it the condition of antecedent membership, or the qualifying test, as it were, for other workmen to espouse the cause of the individual workman previously affected. It is therefore necessary to ascertain the principle on which, the rule of transformation of an individual dispute into an industrial dispute in the above manner has been evolved. The object of the Act is to prevent industrial strife and unrest, and to promote measures for securing and preserving good relations between employer and employees, and is not to Substitute a new procedure, or to supplant the established or ordinary tribunal in the land, for the enforcement of rights, contractual or otherwise, of individual workman. Where individual rights of a workman are violated or are in jeopardy recourse should be had to the ordinary law of the land for resolving the dispute that arises therefrom, but when a Union or a body of workmen, having a recognized nexus with such dispute, takes up his cause against his employer, the dispute sheds its individual characteristics and assumes those of a collective dispute based on a policy of collective bargaining, by a body of men acting together, to which a different code of procedure and principles, governing industrial relations, is applicable.

4. The basic principle has been stated thus by the Supreme Court in *D. N. Banerji v. P. R. Mukherjee*[1], :--

> ".....having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, & collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when a.s often happens, it is taken up by the trade union of which he is a member, and there is a concerted demand by tbe employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise also in such a manner as to cover the industry as a whole in a case where the 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 labour unrest is not a rare, phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between the particular employer and workman".

Later, in. *G.P. Transport Service Ltd., Nagpur v. Raghunath Gopal Patwardhan*[2]. *(S)* , Venkatarama Ayyar, J., formulated the three different views on this subject held by the High Courts and the Industrial Tribunals in India, and expressed his approval of the third view, that a dispute between ah employer and a single employee, though not per se an industrial dispute, may become one, if it is taken up by the union or by a number of workmen. This has been accepted as a rule in two other cases decided by the Supreme Court, not to mention those decided by the High Courts, namely, *Newspapers Ltd. v. State Industrial Tribunal, U.P*[3]*R andWorkmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*[4]*,* though in its application to the facts before it the court has drawn a distinction Or imposed a limitation, particularly in the latter case. In the former, the cause of the individual workman, a lino-operator, was not taken up by the union of workers of the establishment or by any of the unions of workmen employed in similar or allied trades or industries, but only by the U. P. Working Journalists Union which had nothing to do with him, and in the latter, the cause of an Assistant Medical Officer of the tea estate was supported by a union of workmen which had no interest in the category to which he appertained; in both cases, the Court held against the application of the rule. It cannot be, that this rule of transformation of the nature of the dispute is a rule based on numbers or on mere numerical strength of one of the parties; it has also a qualitative aspect, which has found expression in the Dimakuchi Tea Estate's case, AIR 1958 SC 353; it relates to a nexus between the dispute and the parties to the dispute, and it is founded on the true interpretation of the words "of any person" occurring in the following definition of 'industrial dispute' in Section 2(k) of the Act : Section 2 "In this Act, unless there is anything repugnant in the subject or context,....." (k) "Industrial dispute 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".

In the majority judgment in Dimakuchi Tea Estate's case, AIR 1958 SC 353, it was thus laid down :

> "..... the person regarding 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 tbe dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of thd Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest".

Applying this, the Court came to the conclusion, that the appellants before it, who were the workmen of the tea estate, had no interest in the employment or non-employment of a member of

the medical or technical staff of the estate, who on the terms of the definition of 'workman' as it was before the amendment of the year 1956, was held to be not a workman. This definition has been considerably widened by the Amendment Act of 1956, and the scope of the nexus may, 'in consequence, be deemed to have been enlarged. *Mababoob Shahi Kulbarga Mills Co. Ltd. v. K. V. Kamath*[5], in which a clerks' union which espoused the cause of an employee who was on a supervisory post, was held to be wanting in that community of interest which is necessary to establish the nexus, may be cited as one instance, in which the limitation on the rule was applied.

5. It seems to me, that the test for the application of the rule is, whether a substantial body of workmen in the concerned establishment or industry are fighting their employer over "the employment or non-employment or the terms of employment or conditions of labour". This may be presumed when the Union makes common cause with the workman who is affected. Decided cases also speak generally of membership of the workmen in the Union; as I take it, this has a bearing in establishing the requisite nexus, but as in two of the cases in the Supreme Court and in the Mysore case cited, mere membership of the union is not conclusive as to its nexus with the dispute. Membership of course is a necessary condition for representation of a workman under Section 36 (1) (a) of the Act, in proceedings under the Act; but this has nothing to do with the nature of the dispute.

I have endeavoured to state the rule and one of its limitations, as recognized by the Supreme Court; other limitations too have been evolved, but are not germane to the present purpose. I have adverted to this limitation as to nexus, not because its factual existence was the subject of controversy before me but because, in my opinion, once the nexus is established, the condition of antecedent membership of the Union insisted upon so much by the learned counsel, whatever may be said of other conditions which may be thought of, recedes to the background, and cannot be regarded as of the subs- tance of the rule. It also seems to me, that the condition itself has no direct relation to the object of the Act or to the principle of the rule of transformation mentioned above, nor has the learned counsel for the petitioner succeeded in establishing any. All that he relied was on *Padarthy Ratnam and Co. v. Industrial Tribunal, Guntur*[6], decided by a single Judge of Andhra Pradesh High Court, as the only case laying down the proposition. It is therefore necessary to examine this case.

6. Respondents 2 to 4 in that case were dismissed from service by their employer who was carrying on business in tobacco, the workmen in which had not organised themselves into any labour union. After their dismissal, respondents 2 to 4 joined a labour union, the office-bearers of which took up their cause. On these facts, and after referring to *Kandan Textiles Ltd. v. Industrial Tribunal, Madras*[7], decided by the Madras High Court and to the three cases decided by the Supreme Court, (S) AIR 1957 SC 532, AIR 1953 SC 58 and (S) AIR 1957 SC 104,(Supra) already cited, the learned Judge observed, that "on a consideration of the relevant provisions of the Act and the decided cases.....the membership of the union ..... must be anterior to the date of the dismissal and not subsequent to it."

The only provision in the Act adverted to in the judgment was the definition of 'industrial dispute' in Section 2 (k) of the Act. Speaking with respect, it is not clear to me, how the above conclusion can follow from the premises relied on. The condition insisted upon in the judgment as a primary requirement, that on the date on which disciplinary action is taken, the cause of the aggrieved workmen should be taken up by the union or by a substantial section of the establishment appears to me to be indefensible in principle and unworkable in practice, and was not supported by the learned counsel for the petitioner. I therefore find myself unable to adopt the reasoning in

the above case. It also seems to me, that the present enlarged definition of 'workman' in Section 2(s) of the Act, so as to include any "person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute", furnishes another argument, against accepting the view contended for. Membership of the Union, taking it to be a vital condition, though not anterior, being admitted, and the nexus of the Union with the dispute being unchallenged, I come to the conclusion, differing from the reason in Padarthy Ratnam and Co.'s case, 1958-2 Lab LJ 290 that the rule of transformation of an individual dispute into an industrial dispute applies in the present case. The further contention that a mere plurality of 'individual disputes' as it were, as by the three workmen in this case, cannot make up an industrial dispute, does not arise, and I do not propose to go into it. The objection to jurisdiction on this ground fails.

7. The third and the last contention relates to bonus allowed to two of the workmen. It was urged, that the bonus claimed in the present case must depend on profits of the business for the concerned years, and that the Tribunal has not adverted to or passed upon this; it was also pointed out, that the claim was not put on any other basis, than that, the contention of the petitioner that he had discharged the claim for bonus, which was for three months, was found against. Reliance was also placed on the form of the issue referred which reads :

> "Are these workers entitled to any bonus for the years 1953, 1954 and 1955? If so, at what rate"?.
> as raising the point as to whether there was any legal foundation for the claim.
> In the statement filed before the Tribunal on behalf of the workmen, the claim was put on a three-fold basis, a promise by the petitioner, an unfounded allegation, of payment in fact, of three months' bonus as demanded, and the capacity and the liability of the petitioner to meet the claim and in paragraph 4 of the reply statement by the petitioner, his case of payment of three months' bonus was reiterated, with the allegation that "the income from the pump does not entitle the workers to claim more amount by way of bonus". My attention was not invited to anything in the record of the proceedings to suggest, that the question as to profits of the business was raised or put in issue. On these pre-mises, the Tribunal could not be held to have committed an error apparent on the face of the record, or to have acted without or in excess of jurisdiction, in giving effect to the claim for bonus; in deciding the maintainability of the claim the Tribunal was not bound to go beyond the scope of the controversy as impleaded by the parties. This contention of the petitioner too cannot stand,

8. At the last stage, an argument was attempted, that the workmen concerned in this case could not be members of the Union, under the Indian Trade Unions Act, 1926, As observed by the Supreme Court in Dimakuchi Tea Estate's case, AIR 1958 SC 353 :

> "The provisions of that Act have different objects in view, one of which is the expenditure of the funds of a registered Trade Union on the conduct of trade disputes on behalf of the Trade Union or any member there. We do not think that that definition for the purposes of an Act like the Trade Unions Act is of any assistance in construing the definition in the Act with which we are now concerned, even though the words employed are the same; for one thing, the meaning of the word 'workman' completely changes the ambit of the definition clause, and for another, the objects, scheme and purpose of the two Acts are not the same."

However, as this ground had not been taken in the petition and objection was taken to its being (entertained, I do not go into it beyond adverting to the observations of the Supreme Court, extracted above.

9. This petition therefore fails and is dismissed with costs including advocate's fee Rs. 100, one set only to the respondents.

Cases Referred.

1 AIR 1953 S.C. 58
2 AIR 1957 SC 104
3 AIR 1957 SC 532
4 AIR 1958 SC 353
5 AIR 1959 Mys. 180
6(1958) 2 Lab LJ 290
7(1949) 1 Lab LJ 875 : (AIR 1954 Mad 616)