

BOMBAY HIGH COURT

New Jehangir Vakil Mills Ltd

Vs.

N.L. Vyas

Special Civil Application No. 64 of 1957

(D.V. Vyas and D.V. Patel, JJ.)

11.02.1958

JUDGMENT

D.V. Vyas, J.

1. This is a petition under Articles 226 and 227 of the Constitution of India, made by the New Jehangir Vakil Mills Ltd., Bhavnagar and it arises out of an order made by the Industrial Tribunal, Rajkot, in Miscellaneous Application No. 196 of 1956. This petition raises an interesting question and the question raised is the one of construing Section 33 of the Industrial Disputes Act, 1947. This question has arisen in this way Miscellaneous Application No. 196 of 1956 was an application which was filed by certain three workers of the New Jahangir Vakil Mills Ltd., Bhavnagar, under Section 33A of the Industrial Disputes Act, 1947. The three workers complained under Section 33-A of the Act that they were dismissed by notices served upon them on 17-4-1956 and the dismissal was ordered without the previous permission of the Industrial Tribunal, Rajkot. The complaint of the three workers was that at the date of their dismissal, certain disputes in which The New Jehangir Vakil Mills Ltd. and also its workmen were concerned, were pending before the Tribunal and, therefore it was obligatory, under the Act for the Mills to have sought the previous permission of the Tribunal before dismissing the workmen. It may be noted that the three workmen who made the application under Section 33A of the Act were the workmen belonging to the Ring Frame Department of the New Jehangir Vakil Mills Ltd., at Bhavnagar. They were working as doffers. They were dismissed by the Mills on 17-4-1956 and the ground for the dismissal was the misconduct of those workers, the misconduct being that the workers threw bobbins at the Technical Manager. On the date of their dismissal, two disputes were pending before the Tribunal. Those two disputes were Adjudications Nos. 56 and 62 of 1955. In Adjudication No. 56 of 1955, the dispute to be adjudicated upon was a dispute relating to compensation payable to the workers of the winding and warping department. In Adjudication No. 62 of 1955, the dispute to be adjudicated upon was in regard to the detennination of seniority between the three workers of the bleaching department

and the change over which was to be effected upon the basis of the said seniority. Now the three workmen Hira Ramji, Prema Nanji and Popat Bhikha who were dismissed by the Mills on 17-4-1956, contended that since the adjudication proceedings mentioned above were pending at the date of their dismissal, it was obligatory upon the Mills to take the permission of the Industrial Tribunal before dismissing the workers and that as the Mills did not obtain, such prior permission from the Industrial Tribunal, they violated the provisions of Section 33 of the Act. It was upon these contentions that the three workmen complained under Section 33A of the Act to the Industrial Tribunal, so that the Tribunal might adjudicate upon their complaint.

2. Upon the above complaint being filed by the three workmen of the ring frame department of the Mills, the Mills raised a preliminary objection to the maintainability of the worker's application under Section 33A of the Act. The preliminary objection which was taken by the Mills was that the three workmen were not concerned in the disputes which were pending before the Tribunal, and, therefore, the provisions of Section 33 would not be attracted and accordingly the Tribunal would have no jurisdiction to entertain the workmen's complaint under Section 33A of the Act.

3. The Industrial Tribunal at Rajkot, upon the above mentioned preliminary objection being taken, by the Mills, held that although it was true that the three workmen, Hira, Prema and Popat, were not directly concerned in the disputes which were pending in Adjudications Nos. 56 and 62 of 1955, they became concerned in those disputes, since the orders of reference in those disputes which were pending adjudication, were styled as disputes between The New Jehangir Vakil Mills Ltd., Bhavangar and its workmen represented by the Mill Kamdar Union, Bhavangar and since the three workmen mentioned above were members of the said Union. Upon this view of the matter, which the learned Member of the Industrial Tribunal took, he held that the workmen Hira, Prema and Popat were entitled to make an application to the Tribunal under Section 33A of the Act. It is from this order of the Tribunal that the present petition under Articles 226 and 227 of the Constitution of India is filed by the New Jehangir Vakil Mills Ltd., Bhavangar.

4. Now the point which falls to be determined in this petition is a point of construction of Section 33 of the Industrial Disputes Act, 1947. Section 33 provides :

"During the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute, no employer shall -

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings;

or

(b) discharge or punish, whether by dismissal or otherwise any workmen concerned in such dispute, save with the express permission in writing of the conciliation Officer, Board or Tribunal, as the case may be".

5. Now the subject matter of controversy in this case is the expression "concerned in such dispute." Now it is clear that an industrial dispute may be of various kinds. There may be a dispute which might affect the entire body or workmen. For instance, a dispute in the matter of dearness allowance, or fixation of wage scale, or in the matter of leave rules, etc. On the other hand, there might be disputes which might pertain only to a class of workers as distinguished from the entire body of workers, or a part of the establishment for instance, there might be a dispute relating to the dismissal of a new worker. There may be a dispute relating to service conditions of a particular part of the establishment. There might be a dispute in respect of wages, say, of workers of the winding, department and so on. There may be various kinds of industrial disputes. Before the provisions of Section 33 of the Act can be invoked, the Court must be satisfied that the employer had, to the prejudice of the workmen concerned in a dispute, altered the conditions of service applicable to them. We have carefully considered the various submissions which were advanced before us by the learned advocate Mr. Nanavaty for the Mills and the learned advocate Mr. Thakkar for the workmen and we have come to the conclusion, having regard to the plain language used in Section 33 of the Act, that the expression "concerned in such dispute" means really concerned or directly, personally or primarily concerned in such dispute and not merely interested in such dispute. It is not inconceivable that if a particular workman working in a particular department of the Mills is dismissed, the workers of the other department of the Mills might sympathise with him and might make a common cause with his grievance. It is, therefore, conceivable that in a dispute in which only a particular worker might be concerned, the other workers of the other departments of the Mills might be interested. But such an interest would not be the same thing as being "concerned" within the meaning of Section 33 of the Act. What we are emphasising is that in the case of legal or quasi-legal proceedings, a person without being a party to the proceedings may still be interested in the result of the proceedings because of various circumstances, or a close relationship with the parties, or the pendency of other proceedings in which he is involved and in which the same question may be raised. The word "interest" is a wide generic word which clearly enough has not the same legal import as the word "concerned". In our opinion, the word "concerned" connotes a kind of specific, direct interest and in a given legal or quasi-legal proceedings, it implies a direct and personal interest which a party to the proceedings would have in the result of those proceedings, when the same are capable of directly affecting him in any adjudication beneficially or prejudicially; according to the result. It is clear that a mere indirect or altruistic interest in the result of the proceedings is not to be confused with the direct and personal concern in the proceedings. A personal concern in the proceedings would imply that the proceedings are of such a nature that their result would directly benefit or prejudice the persons concerned in the proceedings as a party to those proceedings. Clearly, therefore, if in a given case the entire body of workers make a common cause with a workman who is dismissed from the employment of the Mills and sympathise with the case of that particular worker in a dispute which is raised by that worker, it could not be contended with any validity that the entire body of the workers became concerned in the dispute within the meaning of Section 33 of the Act.

6. At this stage, it would be proper to turn to the orders of reference made in the two disputes which were pending adjudication at the date of the dismissal of these workers, viz., Adjudications Nos. 56 and 62 of 1955. Both these orders of reference were similarly worded. It would, therefore, suffice if I refer to only one of these orders. Now the order of reference in Adjudication Proceedings Nos. 62 of 1955 was in these words :

"Whereas an Industrial Dispute has arisen between the New Jehangir Vakil Mills Co. Ltd., Bhavnagar and its workmen represented by the Mill Kamdar Union, Bhavnagar, so far as the Government is aware in respect of the matters specified in schedule I hereto annexed.

SCHEDULE 1

- (1) Whether Ganpat Gopala, Kierman in temporary 3rd shift or bleaching department is covered by Award in Adjudication No. 20 of 1950.
- (2) To decide the relative seniority of the three workers of the Kier section of the bleaching department working in the three shifts of this section. These workers are (1) Jayantilal Gopalji (2) Ramnarayan Nathuram (3) Ganpat Gopala.
- (3) After deciding the above two issues, how actually the change-over should be made in this Sub-Section of the bleaching department."

7. This was the order of reference which was made in Adjudication No. 62 of 1955. Now the question is who were the parties to the dispute which was referred to the Tribunal for adjudication. It is contended for the Mills that the parties to the adjudication were the New Jehangir Mills Co. Ltd., Bhavnagar and the three workers of the bleaching department viz., Jayantilal Gopalji, Ramnarayan Nathuram and Ganpat Gopala. On the other hand, it is contended for the workers who are the Opponents in this petition, that the parties to the above adjudication were the Mills on the one hand and the entire body of the workmen on the other hand. We have taken into anxious consideration the arguments canvassed before us on this point by the learned advocates on both sides and we have felt ourselves constrained to reject the contention of the workers. Upon the plain language of the preamble to the order of reference, the language being "whereas an Industrial Dispute has arisen between the New Jehangir Vakil Mills Co, Ltd., Bhavnagar and its workmen represented by the Mill Kamdar Union, Bhavnagar, so far as the Government is aware in respect of the matter specified in schedule I hereto annexed". We are of the view that the parties to the adjudication were the Mills on the one hand and the workers concerned in the matters which were specified in schedule I on the other hand. It is not true that the words "represented by the Mill Kamdar Union, Bhavnagar", were used immediately after the word "workmen" in the preamble to the order of reference, but this would not, in our opinion, make the Mill Kamdar Union a party to the adjudication proceedings. The parties in our view were the workmen who were concerned in the dispute in respect of the matters specified in schedule I, but the representation of these workers before the Tribunal was to be made by the

Mill Kamdar Union, Bhavnagar. In this connection, we have only to turn to Section 36 of the Industrial Disputes Act, 1947. Section 36 provides :

"A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade union to which the trade union referred to in clause (a) is affiliated; etc., etc."

8. Now in the language of Section 36 of the Act, the distinction between a workman who is a party on the one hand and the person representing the said party on the other hand, is perfectly clear. But for this distinction which the legislature had in view, the legislature would not have used the words

"workman who is a party to a dispute shall be entitled to be represented etc., etc." It is clear, therefore, that the Mill Kamdar Union, Bhavnagar, who represented the workmen before the Tribunal in the adjudication proceedings, was not a party itself to the proceedings. The parties were the workmen and they were represented by the Kamdar Union. Upon the language of the preamble to the order of reference, it is clear that the workmen were the persons concerned in the dispute in respect of the matters which were specified in schedule 1.

9. If the entire body of the workers were to be deemed to be a party to Adjudication No. 62 of 1955, they would be bound by the result of the adjudication. There is no doubt that in the Adjudication No. 62 of 1955, the persons bound by the result of the adjudication would be the Mills and the employees or the workmen of the bleaching department of the Mills. There could possibly not be any controversy upon this point. Section 18 of the Act is clear. Sub-Section (3) clause (d) of Section 18 provides :

"(3) A settlement arrived at in the course of conciliation proceedings under this Act or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(d) Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

10. Now there is no dispute that on the date of the dispute, the three workmen concerned viz. Jayantilal, Ramanarayan and Ganpat, were members of the bleaching section or department of the Mills. The dispute which was referred to the Tribunal for adjudication was a dispute regarding the relative seniority of those three workers of the bleaching department. Therefore, the

decision of the Tribunal in that dispute would bind, not the entire body of the workers of the Mills, but only the members of the bleaching section of the Mills, who were working in that section on the date on which the dispute arose and also the persons who might subsequently become employed in the bleaching department of the company. No other conclusion is possible upon a plain and natural reading of the provisions of clause (d) of Section 18 of the Act. The point I wish to emphasise is that it would not be the entire body of the workmen employed by the New Jehangir Vakil Mills, Ltd., Bhavnagar, who would be bound by the result of Adjudication No. 62 of 1955. It would only be a class of workers viz., the persons working in the bleaching department of the company who would be bound by the result of the adjudication. Therefore, it is impossible for us to accept the learned advocate Mr. Thakkar's contention that parties to the Adjudication No. 62 of 1955 were the Mills on the one hand and the entire body of workers of the Mills on the other hand.

11. Then again, if Shri Thakkar's contention were right, the language of the preamble to the order of reference would have been : "Whereas an Industrial Dispute has arisen between the Jehangir Vakil Mills Ltd., Bhavnagar and the Mill Kamdar Union, Bhavnagar." But that was not the language of the preamble and deliberately so. The language used was "Whereas an Industrial Dispute has arisen between the New Jehangir Vakil Mills Co. Ltd., Bhavnagar and its workmen represented by the Mill Kamdar Union, Bhavnagar," and in our view, this language must mean that the parties to the adjudication were the Mills on the one hand and the workmen of the Mills who were concerned in the dispute in respect of matters referred to in schedule 1.

12. The well-known rule of construction is that a word here or a word there must not be picked up and separated from its context. The word "workmen" which has found place in the preamble to the order of reference must not be separated from the rest of the words used in the preamble. The entire preamble must be read together and upon a proper reading of the preamble, there is no doubt that the words "its workmen" must be read in the context of words "in respect of the matters specified in schedule I hereto annexed." If we turn, to the schedule, we find a reference made to the three workers of the bleaching department. We also find a reference made to the subject-matter of the dispute, viz., the question about the relative seniority and the consequent question of change-over. There is, therefore, no doubt that the persons really concerned or directly concerned in that dispute were the persons who were interested in the question of relative seniority in the bleaching department, viz., the three persons Jayantilal, Ramnarayan and Ganpat. It would be upon the determination of the relative seniority of these persons that the question of change-over would depend. Therefore, at least it might be said that the only class of workers of the Mills viz., those who were working in the bleaching department of the Mills, were the persons directly concerned in the dispute which was the subject matter of the Adjudication Proceedings No. 62 of 1955 and not the entire body of workers. At this stage, it may be noted and this is important, that the opponents to the present petition, viz., Hira, Prema and Popat, were not the workers in the bleaching department of the Mills. They were the workers in the ring frame department of the Mills. They were doing the work of doffers. That being so, it is difficult

to accept Mr. Thakkar's contention that these three workers who were working as doffers in the ring frame department were really concerned or directly, personally or primarily concerned in the dispute which was referred to the Tribunal for adjudication in Adjudication Proceedings No. 62 of 1955.

13. As I have mentioned above, one of the tests for deciding whether a particular section of the workers was "concerned" in a particular dispute which was referred to the Tribunal for adjudication would be whether those workers would be bound by the award of the Tribunal. Clearly enough if the award of the Tribunal would not lie binding upon a class of persons, the said persons could by no stretch of imagination be held to have been the people concerned in the dispute. If they were concerned in the dispute, the result of the dispute viz., the adjudication, must bind them. I have already referred to clause (b) of Sub-Section (3) of Section 18 of the Act. Upon a proper construction of clause (d) of Sub-Section 3 of Section 18 of the Act and upon its application to the facts of the present case, there would be no doubt that only the workers of the bleaching department of the Mills would be bound by the result of the Adjudication Proceedings No. 62 of 1955. By no stretch of imagination could it be said and indeed that was not the submission of Mr. Thakkar also, that the entire body of the workers would be bound by the result of Adjudication No. 62 of 1955. Therefore also, we feel ourselves fortified in our view that in the present case, the workmen concerned in the dispute which was pending before the Tribunal in Adjudication Proceedings No. 62 of 1955 were Jayantilal, Ramnarayan and Ganpat and through them perhaps nil the workers of the bleaching department. Certainly, the employees, who had nothing to do with the bleaching department of the Mills, could not be said to have been concerned in the dispute.

14. There is another test also which could be usefully applied for determining whether the entire body of the workmen of the Mills could be said to have been the persons concerned in the dispute to which I have referred. For this purpose, we must turn to Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950. Section 22 provides :

"During the period of thirty days allowed for filing of an appeal under Section 10 or during the pendency of any appeal under this Act, no employer shall-

- (a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or
- (b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal, save with the express permission in writing of the Appellate Tribunal."

15. It is to be noted that the expression "workmen concerned in such appeal" which occurs in the body of Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is similar to the expression "workmen concerned in such dispute" which occurs in Section 33 of the Industrial Disputes Act, 1947, Now if we turn to Section 12 of the Industrial Disputes (Appellate Tribunal) Act, 1950, it would appear that Section 12 provides :

"An appeal under this Act against any award of decision of an Industrial Tribunal may be presented to the Appellate Tribunal by any party which is aggrieved by the award or decision."

16. It is clear that a party who is aggrieved by the award could only be a party who is bound by the award. A party who is not bound by the award could certainly not at any time feel itself aggrieved by the award and I have already pointed out, while dealing with Section 18 of the Industrial Disputes Act, 1947, that the persons bound by the award would be the persons employed in the establishment or a part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all the persons who subsequently might become employed in that establishment or part. In the context of the present case, therefore, it would be clear that only those persons who were employed in the bleaching section of the Mills on the date upon which the dispute arose and all those who might subsequently become employed in that section, would be bound by the award of the Tribunal. Therefore, only those persons would be entitled to appeal against the award under Section 12 of the Industrial Disputes (Appellate Tribunal) Act, 1950. This would mean that only those persons and not the entire body of the workmen, would be concerned in the appeal within the meaning of the expression "workmen concerned in such appeal" in Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950. It would be impossible for us to put a wider construction upon the word "concerned" when the dispute is at the initial stage or the original stage and a narrower construction upon the same word when the dispute reaches an appellate stage. The word "concerned" whether used in the context of the original stage, or the initial stage, or the appellate stage, must bear the same connotation and as I have just stated, the persons concerned in the appeal would be, not the entire body of the workmen, but only those who were directly affected by the dispute. In this case, I have stated above, that only the workers of the bleaching section would be directly concerned by the result of the adjudication. Therefore, only they would be concerned in the filing of the appeal. Therefore, at the original stage also of the dispute, we must hold that only the workers of the bleaching section would be the persons concerned in the dispute. Thus then, in the provisions of Sections 12 and 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, we have a test to decide whether the word "concerned" which finds place in Section 33 of the Industrial Disputes Act means directly, personally and primarily concerned, or whether it means remotely interested. We are unable to accept the contention of Mr. Thakkar that any body who might sympathies with a dismissed employee, or who might take interest in the cause of a dismissed employee, would also be said to be a person concerned in the dispute.

17. For the reasons stated above, we are of the view that the Opponents to this petition, viz., Hira Ramji, Prema Nanu and Popat Bhikhu were not the workmen concerned in the disputes which were the subject matter of Adjudications Nos. 55 and 62 of 1955 which were pending at the date upon which they were dismissed, viz., on 17-4-1956. That being so, the provisions of Section 33 of the Industrial Disputes Act would not be attracted in this case and the Industrial Tribunal at Rajkot would have no jurisdiction to entertain the complaint which was filed by these workers

under Section 33A of the said Act. The application is accordingly allowed. We make no order as to costs. A writ of prohibition shall issue and by the writ the Tribunal shall be directed not to proceed further with the complaint which was filed before it under Section 33A of the Industrial Disputes Act by the opponents.

Petition allowed.