PATNA HIGH COURT

New India Assurance Co. Ltd

Vs

Central Govt. Industrial Tribunal

Misc. Judicial Case No. 290 of 1951

(Ramaswami and Sarjoo Prosad, JJ.)

14.01.1953

JUDGMENT

Ramaswami, J.

1. In this case the petitioner, namely, The New India Assurance Co. Ltd. had obtained a writ from this High Court on 14-6-1951, prohibiting the Industrial Tribunal at Dhanbad from proceedings with Reference No.12 of 1951 for adjudication of the dispute between the petitioner and Nagendra Nath Bhattacharya who had been dismissed from the Company's service on 27-4-1949. The reference was made to the Tribunal under Section 10(1) of the Industrial Disputes Act (Act No.14 of 1947) by the notification dated 3-5-1951. After the High Court had issued the rule the Government of India cancelled the order of reference by the notification dated 9-7-tl951. On the same date the Government of India passed another order to the following effect:

> "Whereas an industrial dispute has arisen between the New India Assurance Co. Ltd., Calcutta and the Bihar Provincial Insurance Employees' Association, Patna, in the matter of the termination of services of Sri Nagendranath Bhattacharya a workman at the Patna Branch of the New India Assurance Company. And, whereas the Central Government considers it desirable to refer the dispute for adjudication: Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Act of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad constituted under Section 7 of the Act".

Thereafter the petitioner instituted the present proceedings in the High Court for issue of a writ in the nature of 'certiorari' under Article 226 of the Constitution for calling up the record of the proceedings pending before the tribunal and for quashing the same on the ground that there was no jurisdiction on the part of the Government of India to make the reference.

2. Cause was shown against the rule by the Advocate General on behalf of the Government Industrial Tribunal and by Mr. B.C. Ghosh on behalf of the dismissed employee Nagendra Nath

Bhattacharya and on behalf of the Bihar Provincial Insurance Employees' Association.

3. In support of the rule Mr. Baldeva Sahay argued in the first place that there is no 'industrial dispute' within the meaning of Section 2(k) of the Industrial Disputes Act and consequently the Government of India had no jurisdiction to make a reference under Section 10(1) and proceedings pending before the Tribunal at Dhanbad were illegal and ought to be quashed. The argument of the learned Counsel is that in order to constitute an 'industrial dispute' there must be a dispute or difference between the employer and a body of workmen in the collective sense and that the dispute must be connected with the employment or terms of the employment or with conditions of labour of any person. It was submitted by the learned counsel that dispute between a single workman and the management of the Company was merely an individual dispute concerned with the terms of the employment or the terms of dismissal of a solitary workman, that it was not in its nature or quality an 'industrial dispute' contemplated by the Act. The question is a matter of construction and depends upon the language of clause 2(k) of the Industrial Disputes Act. Clause 2(k) defines an 'industrial dispute' to mean

> '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'.

On behalf of the respondents Mr. B.C. Ghosh referred to the General Clauses Act and contended that under Section 13 of that 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 by Mr. B.C. Ghosh that the word 'employee' in Section 2(k) of the Industrial Disputes Act must be construed so as to include a dispute between the management and a solitary workman whose terms of employment had been affected. In my opinion the argument of Mr. B.C. Ghosh is not correct. Section 13 of the 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 repugnant to 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. Section 10(2) of the Act provides for a reference to a Court or a Tribunal on the application of the parties to an industrial dispute if the appropriate Government is satisfied "that the persons applying represent the majority of each . party". Section 10(3) is also important in this connection. Section 10(3) states that

> "where an industrial dispute has been referred to a Board or Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of tne reference."

Sections 10(2) and 10(3) therefore contemplate a state of affairs where the action of the management in connection with a single workman has developed into a general dispute involving the whole of the workmen or the majority of the workmen in the particular establishment and

there is an apprehension or threat of strike. Section 18 of the Act is also important. This section states that

> "a settlement arrived at in the course of conciliation proceedings shall be binding on (a) all parties to the industrial dispute; (b) all other parties summoned to appear in the proceedings.....(c) where a party referred to in clause(a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; (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".

Section 36 also throws light on the proper construction of the expression 'industrial dispute'. This section states that

> "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 unions to which the trade union referred to in clause (a) is affiliated; (c) where the worker is not a member of any trade union by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed."

Section 36(2) similarly provides that

> "an employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by (a) an officer of an association of employers of which he is a member; (b) an officer of a federation of associations of employers .....(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged.....".

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 view is supported by the decision in - *'Kandan Textile v. Industrial Tribunal Madras'*[1], in which it was held that a dismissed workman cannot, by making a demand for reinstatement, create an industrial dispute, but, if a workers' union or a substantial body of workmen who continue in employment espouse his cause then an industrial dispute may arise. The point was
actually decided by Mack, J., but the Chief Justice did not express his final opinion on this point. In a subsequent case, however - *'United Commercial Bank Ltd. v. Commr. of Labour, Madras*[2]*',*

the Chief Justice definitely expressed the view that if Section 2(k) of the Industrial Disputes Act was to apply there must be a dispute between a body of employees in the collective sense and the management and that a dispute between a solitary employee and the management would not by itself constitute an industrial dispute falling within the scope of Section 2(k) of the Industrial Disputes Act. At page 144 the learned Chief Justice said:

> "In my opinion, this is not the result. The two Acts, namely, the Industrial Disputes Act and the Madras Act are not in 'pari materia'. Though in one sense, Section 41(2) of the Madras Act concerns a dispute between an employee and an employer, an individual dispute failing 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 longer an individual dispute between the dismissed workman and the employer only; it becomes a dispute between the workmen on the one hand and the employment on the other. Such a dispute, it may be called a collective dispute, certainly cannot be the subject-matter of an appeal under Section 41 of the Madras Act. Such dispute would have to be referred to a Tribunal or other authority under Section 10, Industrial Disputes Act either by the Government 'suo motu' or at the instance of one or both of the parties. In - 'AIR 1951 Madras 61 ft, it was held by a Bench of this Court that something more than an individual dispute between a worker and the employer is required to make the dispute an industrial dispute. It was; pointed out in that case that a dispute which in its origin might be an individual dispute may at a later stage develop into a collective dispute which could be properly called an industrial dispute. We have not been referred to any authority which holds to the contrary".

The same view has been adopted in - *'J. Chaudry v. M.C. Banerjee[3]',* and - *'Standard Vaccum Oil Co. v. Industrial Tribunal Enrakulam[4]',* (D).

4. There is another matter to be considered in this connection. The Industrial Disputes Act (Act 14 of 1947) is legislation with reference to item No.22 in the Concurrent List, namely,

> "Trade Unions; industrial and labour disputes". The expression 'industrial dispute' cannot be construed in a grammatical sense so as to mean any dispute relating to an industrial establishment. The conception of industrial dispute is a conception in the realm of economics. It connotes a dispute between capital and labour organised in a collective sense. The object of an industrial dispute in this sense is to obtain new industrial conditions for the body of employees and not merely to ventilate the grievance of any specific individual employee at a particular moment in an industrial establishment. An industrial dispute, therefore, involves two elements, viz., (1) the dispute must relate to industrial
> matters; and (2) at least on one side of the dispute the disputants must be a body of men acting in collective manner and not individual. In the Australian case - *'Jumbunna Coal Mine, No Liability v. Victorian Coal Miners' Association[5]',* Griffith, C.J., said that "an

> industrial dispute exists where a considerable number of employees engaged in some branch of industry make common cause in demanding from or refusing to their employers (whether one or more) some change in the conditions of employment which is denied to them or asked of them."

In a later case - *'George Hudson Ltd. v. Australian Timber Workers' Union[6]',* Issacs, J., referred pointedly to the difference between an individual dispute and an industrial dispute. At page 441 the learned Judge states:

> "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 then 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. The concept looks entirely beyond the individuals who are actually fighting the battle. It is a battle by the claimants, not for themselves alone and not as against the respondents alone, but by the claimants so far as they represent their class, against the respondents so far as they represent their class."

5. In the present case, therefore, I am of opinion that the dispute between the petitioner and the dismissed employee Nagnedra Nath Bhattacharya does not fall within the ambit of the expression 'industrial dispute' as defined in Section 2(K) of the Act and that the conciliation proceedings initiated under Section 12 were without jurisdiction. It follows that the reference made by the Government under Section 10(1) of the Act by the notifications dated 3-5-1951 and 9-7-1951 must be held to be beyond jurisdiction and 'ultra vires'.

6. It was nevertheless argued on behalf of the respondents that the cause of the dismissed employee was taken up by the Insurance Employees Association and there was an 'industrial dispute' within the meaning of the Act on the date when the Government of India issued the notification dated 9-7-1951. On this point the learned Advocate General referred to the terms of the notification and argued that there was a presumption that the facts stated in the notification are correct and that there was a dispute between the Association and the petitioner on the date the notification was issued. The presumption upon which the Advocate General relies is not an absolute presumption but it may be rebutted by proper evidence adduced by the parties interested. In the present case, it was submitted by Mr. Baldeva Sahay on behalf of the petitioner that there was nothing to show that at any time the Association had approached the petitioner for the reinstatement of Mr. Bhattacharya. It was contended by the learned counsel that the Association made no demand from the petitioner and
no reasonable opportunity was given to the petitioner to comply with any such
demand. It was stated that the petitioner was not aware that the Association had taken up the cause of the dismissed employee or that it made any reference to the Government of India in the matter. Learned counsel referred to Para. 4 of his affidavit which states that

> "the Association did not raise any dispute at the time of the dismissal of the aforesaid Sri

> Nagen-dra Nath and did not make any demand on his behalf, which could possibly have been refused".

In the affidavit filed on behalf of the Employees' Assocition there is no specific denial of the facts stated in Para.4(b) of the petitioner's affidavit. In this state of facts it is impossible to hold that there was any dispute between the Association and the petitioner which would give jurisdiction to the Government of India to make a reference under Section 10(1) of the Industrial Disputes Act. The case is governed, in my opinion, by the principle laid by this Court in - *'Members of the Sasamusa Workers Union v. State of Bihar*[7]*'* in which it was held that there was no 'industrial dispute' within the meaning of the Act if there was no material to show that the notice of strike by the Workers' Union was in fact served upon the management or that reasonable opportunity was given to the management to comply with the demands made on behalf of the Workers' Union, or that the management was otherwise aware of those demands. On behalf of the respondents reliance was placed by the learned Advocate General on - *Standard Coal Co. Ltd. v. S.P. Varma*[8]*,* in which it was observed that

> "there may be instances where workers may consider it wholly useless to make a demand for redress on the management and prefer to move the appropriate machinery set up by Government for the redress of their grievances. But nevertheless, it will be an industrial dispute if it comes within the meaning of Section 2(k) of the Act."

This observation must be, however, read in the context of the special facts admitted or proved in that case. It would appear that certain demands were made by the workmen through their trade union direct to the Regional Labour Commissioner and not direct to the management of the colliery. But there was material in that case to indicate that the Regional Labour Commissioner had correspondence with the management of the colliery who was aware of the demands made by the workers. Upon these facts it was held by the Bench that it was wholly useless for the workers to make a formal demand for redress on the management and it was open to them to move the appropriate machinery set up by Government for the redress of their grievances. In the present case, the material facts are wholly different. There is no evidence whatsoever to suggest or to indicate that the petitioner was aware that the Association had taken up the cause of the dismissed employee or that it was insisting on his reinstatement. In my opinion upon the facts proved in this case it must be held that there was no industrial dispute within the meaning of Section 2(k) of the Act and that the reference made by the Government of India under Section 10 (1) is without jurisdiction.

7. For these reasons I would make the rule absolute and direct that the reference made by the Government of India by the notification dated 9-7-1951 and the proceedings, consequent on the reference, pending before the Tribunal at Dhanbad should be quashed. There will be no order as to costs.

Sarjoo Prosad, J.

8. On the facts disclosed in the affidavits of the respective parties I cannot but hold that there is no existence of any industrial dispute within the meaning of Section 2(k) of the Act so as to warrant a reference to the tribunal. There is nothing in their affidavits to show that the Provincial

Insurance Employees' Association which came into being on 18-3-1950, long after the dismissal of the workman Sri Nagendra Nath Bhattacharya on 27-4-1949, at any stage interested itself on behalf of the dismissed employee before the petitioner Company or took up his cause before it. There is apparently some conflict between a Division Bench judgment of this Court reported in - 'AIR 1952 Patna 56' and another Bench decision of this Court reported in - 'AIR 1952 Patna 210' to which my learned Brother was himself a party. It is not necessary, however, to attempt to resolve that conflict if any, because the decision in - 'AIR 1952 Patna 56,' as pointed out by my learned Brother, has to be confined to its own facts. I, therefore, agree that the rule should be made absolute and the proceedings pending before the Tribunal should be quashed.
Rule made absolute.

Cases Referred.

[1] AIR 1951 Mad 616
[2] AIR 1951 Mad 141
[3] 55 Cal WN.25S
[4] AIR 1952 Trav Coc 249
[5] 6 Com. WLR 309, 332
[6] 32 Com WLR 413
[7] AIR ' 1952 Pat 210
[8] AIR 1952 Pat 56