
(1969) 05 CAL CK 0001
In the Calcutta High Court

Air France

APPELLANT

Vs

Miss K. Kotval and Others

RESPONDENT

Date of Decision : 20-05-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2(k), 2A

Citation : 74 CWN 304 : (1971) 1 ILR (Cal) 295 : (1970) 2 LLJ 68

Hon'ble Judges : D. Basu, J;A.K. Basu, J

Bench : Division Bench

Judgement

D. Basu, J.—The respondent Miss Kotval was an employee of the appellant, Air France, who was dismissed by an order dated December 30, 1963. On the 5th August, 1964, the Government of West Bengal, by an order u/s 10(1) of the Industrial Disputes Act, referred the question as to the Validity of the dismissal of the respondent as an industrial dispute to be adjudicated by the Third Industrial Tribunal, Calcutta. An extract of that order can be found at annexure "f" to the paper-book. It is stated in the order of reference that the dispute was one between M/s Air France and "Their workmen represented by the Aero Employees" Union, West Bengal, No. 2 Gate, Calcutta Air Port." Before the tribunal, the two parties who filed written statements and conducted the case were the said union of the company, that is, M/s Air France and the respondent. The learned tribunal concluded that the tribunal had no jurisdiction to adjudicate the issue under reference or to give any relief whatsoever to the concerned workman Miss Kotval (page 54 of the paper-book) and accordingly, disposed of the reference as not maintainable in law. The reason why it refused to exercise jurisdiction was that it was not an "industrial dispute" as defined in Section 2(k) of the Industrial Disputes Act, 1947, inasmuch as it was a dispute between the employer and a single workman, namely, the respondent. It was conceded before the tribunal that "excepting Miss Kotval no other employee of the company that is, M/s Air France, was a member of the Aero Employees" Union."

2. Relying upon this admission and referring to the case laws as they then

existed, the tribunal laid down the following principle at page 51 of the paper book "a dispute between an employer and a single workman is not per se an industrial dispute, but it may become one if taken up by a number of workmen or by a union representing the workmen," The tribunal's attention having been drawn to Section 2A of the Industrial Disputes Act which had been introduced into the Act by amendment of 1965, the tribunal held that that section was not retrospective in its operation and, therefore, could not convert what was an individual dispute into an industrial dispute" by applying that section with retrospective effect. In substance, the conclusion of the tribunal was that under the law as it existed before insertion of Section 2A into the Act, the dismissal of the respondent was an individual dispute and not an industrial dispute as mentioned in Section 2(k) of the Act, and in that view the tribunal refused to adjudicate upon the dispute referred to it by the Government. As against this award of the industrial tribunal a petition under Article 226 of the Constitution was presented by the respondent, that is, Miss Kotval herself, in which application the said union was made a party respondent, before Mitra, J., of this Court, on the 17th February, 1969. His Lordship dealt with three questions raised before him.

3. On the question of Section 2A being retrospective be rejected the contention as raised on behalf of the respondent but, nevertheless, upon reference to the later decisions of the Supreme Court, particularly the decision in the case of Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), , Mitra, J., came to the opinion that even before the insertion of Section 2A by the amendment of 1965, the law was that even a dispute affecting particular workmen could be sponsored as an industrial dispute u/s 2(K), if the employees of a particular company had no union of their own and the cause of the employees of that company was sponsored by a union of workmen engaged in a similar industry.

4. On the third question raised on behalf of the respondent that the petition under Article 226 should be refused in view of the concession made by the counsel on behalf of the union before the tribunal was rejected by our learned brother, holding in substance that the jurisdiction of the tribunal was not a matter which could be concluded by the concession of a party or its counsel. In view of the decision of the Court on the question of jurisdiction, Mitra J. remanded the matter to the industrial tribunal, which was respondent No. 1 before the learned court, "to be adjudicated upon by it according to law". Some argument was made before us as to what was meant by it. The answer to that is furnished by the last sentence of the first paragraph at page 84 of the paper book in these words, "In my view the dispute must be held to be an industrial dispute and the respondent No. 1 was not justified in refusing to adjudicate upon the dispute on the ground that the order of reference was bad." A question which was touched in course of argument on behalf of the appellant before us was the form in which the order of the court below was couched. There are, of course, words which give the impression that it was a writ of certiorari which was being

granted by the learned court below but it was essentially a case where the writ of mandamus was attracted inasmuch as it was a case of refusal to exercise jurisdiction by an inferior tribunal. In fact, the petitioner before the court below in the application under Article 226 had also asked for mandamus though of course the language was not precise enough in that behalf.

5. Though various side issues have been raised in course of the hearing it is quite evident that only question on the merits to be determined in the petition under Article 226 as well as by this Court sitting in appeal is whether the industrial tribunal in question had jurisdiction to adjudicate upon the dispute regarding the dismissal of the respondent, or, in other words, whether this dispute was an industrial dispute within the meaning of Section 2(k) as it stood prior to the insertion of Section 2A by the amendment of 1963. It was faintly suggested on behalf of the appellant that the question had to be answered with reference to the law as it stood at the time when the reference was placed before the industrial tribunal. Undoubtedly so far as statutes are concerned, that is the correct position and, in a word, we may say that Section 2A is not in any way retrospective in operation, That does not, however, conclude the matter inasmuch as the question of the proper interpretation of Section 2(k), even as it stood before the amendment of 1965, is a question of law on which the interpretation given by the Supreme Court is binding upon this Court under Article 141 of the Constitution and it is the law as declared by the Supreme Court upto the date of the judgment pronounced by this Court sitting in appeal, which is so binding. The question as to whether the tribunal had jurisdiction has to be considered by this Court according to the pronouncements of the Supreme Court as are available till today. It is true that prior to the decision of the Supreme Court in *Dharam Pal's case* AIR 1966 S.C. page 182 there were observations in some cases which might suggest that when a union takes up the cause of a workman that union must necessarily be a union belonging to the unit of the industry or the company of which the aggrieved workman was an employee, but the decision in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, as well as the later unreported decision in *Workmen of Indian Express (P) Ltd. v. The Management* C.A. 1733 of 1967 decided on the 26th November 1968, have made it clear that in order to be competent to sponsor the cause of a workman in an industrial dispute the union need not be a union necessarily composed of the workmen of the particular unit of the company or an establishment of which the aggrieved workman is an employee but may also be a union which represents the workmen of the industry as a whole to which the particular establishment appertains. On the question of fact it may be stated at once that the industry in the case before us is the industry of air transport which is being carried on by Messrs, Air France as also by other companies such as Air India and the like. The union in question is called the Aero Employees' Union. The dispute all along before the tribunal as well as in the court below had been primarily on the question as to whether any other employee of the Air France excepting the respondent was a member of the Aero

Employees" Union. So far as the statement in paragraph 1 of the petition under Article 226 is concerned, namely, that all the members of respondent No. 4 are workmen employed in the air industry of West Bengal, though it was contested in the court below, was not specifically challenged in that form before the tribunal in the written statement filed on behalf of Air France (pages 41 and 42 of the paper book). Two objections were raised to the reference before the tribunal in this behalf; (1) that Miss Kotval, mentioned in the said order of reference, is not a workman and, secondly, the employees of the company at the relevant period were not members of the Aero Employees" Union or any other union; in other words, excepting the respondent no other employee of Air France was a member of the Aero Employees" Union or any other employees" union. The further question which has arisen before us is whether the Aero Employees" Union is representative of the workmen engaged in the industry of air transport. Leaving that further Question aside for the time being this much may be said that the materials on record as a whole go to show that the Aero Employees" Union is a union which consists of employees engaged in the industry of air transport including the petitioner though no other employee of the particular unit in the industry in which the petitioner is employed, namely, Air France, is a member of that union.

6. Stopping here so far as the facts are concerned let us advert to the interpretation of Section 2(k) as the law stood before the introduction of Section 2A. Section 2(k) says: "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."

7. Now since the dispute before us is a dispute concerning the employment or non-employment of the respondent the only questions which have got to be decided are?whether the respondent is a workman as denned in Industrial Disputes Act; secondly, whether this is a dispute between "employers" and "workmen" as these two terms are defined in the Act. Now, so far as the question whether the respondent is a workman to whom the Industrial Disputes Act applies we are relieved from further investigation inasmuch as this was not disputed before us.

8. The only question, therefore, left to be determined is whether this is a dispute between "employers" and "workmen". These two terms are of course used in the plural number so far as the definition is concerned. But the use of the plural number is not conclusive as has been pointed out by Gajendragadkar, C.J. in Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), in these words: "Literally construed, this definition may take within its sweep a dispute between a single workman and his employer, because the plural, in the context, will include the singular."

9. What then are the contingencies which may render an individual dispute of a

single workman an industrial dispute as defined in Section 2(k) of the Act 7 To answer this question one is to appreciate the policy and the object of the Industrial Disputes Act which has been explained by various decisions of the Supreme Court including the decision of Dharam Pal just referred to. As is well-known, the Industrial Disputes Act is a legislation relating to what is known as collective bargaining in the economic jurisdiction. After the industrial revolution and introduction of industrialism in the modern form in the western world, the parity between a worker and his employer has been disturbed by the fact that the employer, in most cases, is more powerful because of the accumulation in his hand of the capital and assets which are necessary to run such industrial establishments, and as a result of this disparity it has been taken cognizance of by legislatures of various States that unless the workmen or employees of such establishments are enabled to agitate their grievances in a collective way, they would be no match for their employers and their legitimate grievances might not be heeded to, and this would eventually bring about industrial unrest or disturbance. The object of such legislation is to prevent such disturbances in the industrial world, in the public interests. The word "Industry" as has been used in the Industrial Disputes Act is defined in Clause (j) of Section 2 of the Act: "(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."

10. It, therefore, refers to a business or avocation as well and not to particular unit thereof. The particular unit comes into question because if there is a disturbance of the equilibrium in any of the units of an industry, it may raise repercussions in the "industry" in which that unit appertains. We have now to refer to the definition of workman in Clause (s) of Section 2: "(s) Workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled...work...."

11. The word "industry" in Section 2(8) has, therefore, to be understood with reference to the definition of industry given earlier. An industrial dispute, accordingly, means a dispute between a workman employed in an "industry" and his employer. The question of a particular unit may be in the background but it does not come to the forefront.

12. The next question which arises is--where it is a dispute regarding a single employee of a particular unit of an industry, can it be an "industrial dispute." To my mind, the answer should be in the affirmative, provided the dispute which affects the single workman is not something peculiar to that workman which is not either shared by other workmen engaged in the industry or such as would not evoke any sort of sympathy on the part of the other workmen engaged in the same industry. In the instant case it has not been urged on behalf of the respondent that the dispute relating to the dismissal of the respondent is in any way of that personal nature. Judged by this test, thus, the dispute affecting the dismissal of the respondent may be an industrial dispute.

13. But the question remains as to who should raise this dispute under the Act for reference to the tribunal. It is not necessary that in every case of an industrial dispute, the dispute must be raised by a union. It can also be raised by the employees themselves who are affected or a substantial number of them can sponsor the case of an individual employee who has been aggrieved. But instead of the employees themselves coming before the tribunal in a body their case may be taken up by a union. The question which is raised before us is a simple question namely, whether that union may be a union other than the union of the workmen of the unit or establishment to which the aggrieved workman belongs. The contention of the appellant is that the Aero Employees' Union, not being a representative union of the employees of the company, that is to say, M/s. Air France, is not entitled under the law to sponsor the case of the respondents. It is on this ground, primarily, that the appellant resisted the reference before the tribunal by its averment in paragraph 1 of the written statement at page 41 of the paper-book and this was the ground why the tribunal refused to entertain the reference and to assume jurisdiction to adjudicate this dispute. This union was thus not a union, of the employees of the Air France at the material time, i.e., at the time of the reference, and could not also as such represent the workers in the dispute relating to the dismissal of Miss Kotval. Again the tribunal observed at page 52 of the paper-book: "Had the case of Miss Kotval been taken up by the other workmen as a body or by a union representing them, the dispute under reference would certainly have been an industrial dispute under the Act, but the Aero Employees' Union which is representing Miss Kotval in this proceeding is not a union of the company's workers and has not also on its roll of members any employee of the company other than Miss Kotval," The question, in short, is whether the union of workmen in one establishment of an industry can represent the workmen belonging to another establishment in the same industry, and this is the question which has been dealt with in the case of Dharampal already cited and in the later decision of the Workmen, Indian Express (P) Ltd. v. Management to which we shall presently advert, But before that we must also refer to an earlier decision in The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, . This case prima facie supports the contention of the appellant that the dispute concerning a single employee cannot be an industrial dispute but the decision in that case has been considered by the Supreme Court in Dharam Pal's case in paragraphs 8 to 10 of Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), . It was pointed out that the resolution by which the Bombay Union of Journalists was alleged to have taken up the dispute of a single workman, namely, Salivateeswaran, was proved to have been fabricated with a view to support the case of Salivateeswaran. If that was so, the case was decided on the facts established therein. The later decisions of the Supreme Court lay down that the question is not to be decided on the number of (i.e. on the quantitative test) of the workmen aggrieved. Dharam Pal's case was, of course, a case of eighteen workmen who are aggrieved but the observations therein which are relevant to the instant case are general in nature as will presently be shown and in the later

case of *The Workmen of Indian Express (P) Ltd.* the workmen aggrieved were only two. These circumstances show that the quantitative test is not conclusive.

14. For the answer to the question posed, namely, whether a union representing the workmen of one unit in an industry can sponsor the case of a dispute concerning a workman belonging to another unit we must turn to the observation in paragraph 12 of *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, : "...it is conceivable that the workman of an establishment have no union of their own, and some or all of them join the union of another establishment belonging to the same industry. In such a case, if the said union takes up the case of the workmen working in an establishment which has no union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute."

15. In the instant case this much is undisputed that excepting the respondent alone, the workmen of Air France are not members of any union. It is also evident, as I have stated before, that the Aero Employees' Union is a union of workmen at least some of whom are employees engaged in the industry of air transport, though we have got no sufficient materials to show the precise composition of that union. We have, therefore, to answer the further question whether it can fairly claim "a representative character". As to what is meant by these words "representative character", some light is thrown as made by the observations in the decision of *The Workmen of Indian Express (P) Ltd.* as follows: "Where the workmen of an establishment have no union of their own and some or all of them have joined a union of another establishment belonging to the same industry, if such a union takes up the cause of the workman working in an establishment which has no union of its own, the dispute would become an industrial dispute if such a union can claim a representative character in a way that its support would make the dispute an industrial dispute."

16. As regards the observation in *Dharam Pal's* case it was further observed: "The question whether the union sponsoring a dispute must be the union of workmen in the establishment in which the workman concerned is employed or not had not so far arisen. It seems such a question arose for the first time in the case of *Bombay Union of Journalists v. The Hindu, Bombay* (supra). The decision in that case laid down, (1) that the Industrial Disputes Act excluded its application to an individual dispute as distinguished from a dispute involving a group of workmen unless such a dispute is made a common cause by a body or a considerable section of workmen, and (2) the members of a union who are not workmen of the employer against whom the dispute is sought to be raised

cannot by their support convert an individual dispute into an industrial dispute. Persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. The court held that the dispute there being prima facie an individual dispute it was necessary in order to convert it into an industrial dispute that it should be taken up by a union of the employees or by an appreciable number of employees of the Hindu, Bombay. But in *Workmen v. Dharampal Premchand* this Court, after reviewing the previous decisions, distinguished the case of Hindu, Bombay and held that notwithstanding the width of the words used in Section 2(k) of the Act a dispute raised by an individual workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by a number of workmen, that a union may validly raise a dispute though it may be a minority union of the workmen employed in an establishment, that if there was no union of workmen in an establishment a group of employees can raise the dispute which becomes an industrial dispute even though it is a dispute relating to an individual workman and lastly, that where the workmen of an establishment have no union of their own and some or all of them have joined a union of another establishment belonging to the same industry, if such a union takes up the cause of the workman working in an establishment which has no union of its own, the dispute would become an industrial dispute if such a union can claim a representative character in a way that its support would make the dispute an industrial dispute."

17. The substance of this observation is that though the union which sponsors the case of a workman does not belong to the same establishment, but is composed of a substantial number of workmen working in the "industry" to which the workman belongs, it may be said to be representative of the workers in that industry, in which case it can sponsor the case of the individual workman, the principle being that in that case it would be an industrial dispute relating to the workmen engaged in that industry, in general. As I have stated earlier, the test is not whether the particular workmen of one unit are affected but whether the workmen of the industry to which the workman belongs are interested in the adjudication of the dispute. If this be the law upon a proper interpretation of Section 2(k), as it stood before the amendment, the only question which is still to be determined is whether the Aero Employees' Union is representative of the workmen engaged in the industry of air transport. The tribunal thought that this representative character must relate to the fact of representation of the workmen engaged in Air France alone and the concession which was sought to be relied upon in the court below was a concession of the learned Advocate appearing on behalf of the union to the effect that "The Aero Employees' Union was not a representative union of the employees of the company". But if the test, as we have stated above, is not whether the union is a representative union of the company but whether it represents all the employees engaged in the same "industry", then such concession would not be material in any way whatsoever.

18. The learned court below held that "this union was a union of workmen who are employed in a similar industry", but the truth is that we have not got on the records sufficient materials to come to the conclusion that the Aero Employees' Union is fairly representative of the employees engaged in the industry of air transport. Learned Counsel for the appellant fairly conceded that this question, in so many words, could not be raised by either party before the tribunal inasmuch as at that time the decision of the Supreme Court in Dharampal's case was not available. But this is a question of fact upon which, without further evidence, this Court cannot pronounce any judgment.

19. In our view, the solution of this problem would be to send this case back to the court below for a fresh determination of this question, as formulated above, with liberty to all the parties concerned including the union in question, to file fresh affidavits touching this point as to the composition of the Aero Employees' Union in question, and as to whether, in view of such composition, it can be said to be fairly representative of the workmen engaged in the air transport industry.

20. With these observations and directions this appeal is allowed and the judgment of the court below is set aside and the case is remanded to the said court for a fresh determination according to law after coming to a finding on the question just formulated, namely, whether the Aero Employees' Union can be said to be fairly representative of the workmen engaged in the air transport.

21. If this question is answered in the affirmative by the court below the conclusion would be that the industrial tribunal had jurisdiction to adjudicate upon the dispute referred to it by the Government notification in question and in that case, the said tribunal should be directed to adjudicate upon the dispute on the merits and according to law.

22. On the other hand, if the answer be in the negative, there would be an end of the matter and the Rule shall be discharged.

23. Costs will abide the final decision in this case.