

(1958) 11 BOM CK 0025

In the Bombay High Court

Case No : Application (I.T.) No. 119 of 1958, in Reference (I.T.) No. 40 of 1958

Amar Dye-chem. Ltd., Kalyan

APPELLANT

Vs

G.M. Raut and Another

RESPONDENT

Date of Decision : 15-11-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(1), 33(2), 33A

Citation : (1959) 2 LLJ 98

Hon'ble Judges : J.A. Baxi, J

Bench : Single Bench

Judgement

1. These applications are made by the Amar Dye-Chem., Ltd., Kalyan, against the opponents seeking the tribunal's approval for the action taken against them. The applications are made under S. 33(2)(b) of the Industrial Disputes Act, 1947. The action for which approval is sought is the dismissal of the workmen under model standing orders in respect of misconduct. The misconduct alleged in Application (I.T.) No. 118 of 1958, is negligence in the discharge of duties and/or aiding or abetting theft of a typewriter from the administrative building of the factory during the hours on which the opponent was on duty as watchman, which is misconduct under model standing orders 23(d), 23(l), 23(m), 25(c) and 25(e). The misconduct alleged against the opponents in Application (I.T.) No. 119 of 1958 is absence from the appointed place of work without permission, abuse, assault and trying to collect union subscription and abetment thereof as also the commission of an act subversive of discipline and good behaviour within the establishment which is a misconduct under model standing orders 25(e), 23(k), 23(p) and 23(l). As both the applications involve the same question of law they are disposed of by this common order.

2. The company has stated in both the applications that its action may be approved, if necessary, as the standing orders sent to Labour Commissioner for certification have not yet been received and as such the tribunal's approval is not necessary. Certain decisions to the effect that if the company has no certified

standing orders, the tribunal's approval is not necessary have been cited in the applications in support of this contention. The opponents have filed written statements contesting the company's applications on several grounds. But Sri Khambhatta, who appeared for the company, raised the preliminary point about the maintainability of the applications on the ground that the tribunal's approval was not necessary. The parties were, therefore, heard on that point only and the opponents' rest of the contentions are kept open. Sri Khambhatta submitted that as the company had no certified standing orders, S. 33 of the Industrial Disputes Act has no application and the approval of the tribunal for its action in dismissing the opponent was not required. Section 33(2)(b) reads as follows :-

"(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, -

(a) * * *

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

3. In *Poona Omaji v. B. Bamboat & Co. (Private), Ltd., Bombay* [Complaint (I.T.) No. 42 of 1957 in Reference (I.T.) No. 153 of 1956]. Sri P. D. Sawarkar held that Sub-section (2) came into operation only if action was taken by the employer "in accordance with the standing orders applicable to a workman concerned in such dispute" and as the company had no standing orders of its own Sub-section (2) had no application and the employer was not bound to apply for the tribunal's approval. This decision was followed by the President Sri M. R. Meher, in *K. T. Anthony v. Good Year Tyre and Rubber Company of India (Private), Ltd., Bombay* 1958 I L.L.J. 377. That decision was given on a complaint by a workman under S. 33A of the Industrial Disputes Act alleging that his transfer from the company's Bombay office to Ahmedabad amounted to an alteration in the conditions of service to his prejudice in contravention of S. 33 of the Act. The learned industrial tribunal, while accepting the plea that his transfer amounted to an alteration in the conditions of service prejudicial to him, held that his approval was not necessary as the company had no certified standing orders applicable to it and there was no technical breach of S. 33. This decision was followed in *Krishna Steel Industries (Private), Ltd., Bombay v. Paul Martin Karkada* 1958 I.C.R. 868 in which it was held that where there are no certified standing orders Sub-section (2) of S. 33 did not apply and approval of the tribunal was not required. Relying on these decisions Sri Khambhatta argued that as the company had no certified standing orders the tribunal's approval was not necessary. Sri Sule, on the other hand, submitted that S. 33(2) speaks of action taken in

accordance with "standing orders" and not "certified standing orders" and when an employer has in fact framed and applied standing orders to his workmen the provisions of S. 33(2) are attracted though the standing orders may not have been certified. According to him, the sub-section applied to every industrial establishment which had in fact standing orders applicable to its workmen irrespective of whether they were certified or not.

4. An examination of the decision in K. T. Anthony case shows that what was intended to be laid down there was that S. 33(2) did not apply to those employers who had no standing orders. It did not lay down that before S. 33(2) could be applied it must be shown that the employer had certified standing orders. In Para. 7 of the award Sri Meher observed as follows :-

"In the view that I have taken such alterations are not prohibited where there are no standing orders and so technically there was no breach of S. 33."

In Poona Omaji v. Bamboat & Co. (Private), Ltd., Bombay [Complaint (I.T.) No. 42 of 1957 in Reference (I.T.) No. 153 of 1956] which Sri Meher followed in K. T. Anthony case, there were no standing orders. The question as to whether S. 33(2) would apply in the case of an employer who had framed and applied standing orders to his workmen without getting them certified was not before Sri Savarkar who decided Poona Omaji case. Anthony case seems to have been argued on the assumption that except the standing orders which were sent to the Labour Commissioner for certification and which had not yet become operative under S. 11 of the Industrial Employment (Standing Orders) Act, 1946, the company had no other standing orders applicable to it. The case of Krishna Steel Industries, Ltd., cited above was decided by me on the same assumption. If that case purports to lay down that S. 33A will not apply except where the employers has certified standing orders, that decision must be taken to be confined to its own facts. Therefore, none of these cases touch the question whether S. 33(2) would apply to the employer who has standing orders but they are not certified.

5. Standing orders are required to be certified under the Industrial Employment (Standing Orders) Act, 1946, and the Act is applicable to an establishment wherein 100 or more workmen are employed. Therefore, smaller establishments employing less than 100 workmen are exempt from the operation of the Act and do not require to have their standing orders certified. If S. 33(2) is confined to establishments which are required to have certified standing orders, then a large number of smaller establishments which by having standing orders of their own literally comply with the provisions of Sub-section (2) S. 33 will be left out only because their standing orders do not require to be certified, and their workmen will be denied the protection which the sub-section gives them. The legislature could not have intended to confine the provisions of the sub-section to workmen of only larger establishments which require to have certified standing orders. This is made clear by the fact that sub-section uses the words "standing order" and not "certified standing orders." Moreover, S. 33(1), which requires prior

permission of the tribunal or other authority before an employer can effect an alteration in the conditions of service to the prejudice of its workmen or punish them for misconduct connected with the dispute, makes no distinction between small and large establishments and extends its protection to the workmen of all the establishments covered by the Industrial Disputes Act. Sub-section (2) relaxes the rigour of Sub-sec (1) to some extent, but nevertheless it gives some protection to the workmen. There is no reason to suppose that the legislature intended to exclude workmen of smaller establishments having standing orders of their own, though uncertified, from the ambit of Sub-section (2) and take away the protection which Sub-section (2) gives them and leave them to the mercy of employers. The expression "standing orders" is not defined in the Industrial Disputes Act but, as observed by Sri Meher in Anthony case, it has a well-defined meaning. That expression has been construed by the Labour Appellate Tribunal in the case of Standard Vacuum Oil Company, Ltd., Calcutta v. Their employees 1954 II L.L.J. 355 as the conditions of service having been reduced to writing. If, therefore, conditions of service are reduced to writing by the employer by framing standing orders and the standing orders are applied by him to his workers he cannot escape the operation of Sub-section (2) on the ground that the standing orders are not certified. He is required to apply for approval of the action taken by him.

6. In this case the manager of the company admitted before me that the company had adopted and applied model standing orders to its workmen. The union has filed a letter dated 14 June, 1958 from the company showing that the model standing orders have been exhibited on the notice board. The model standing orders thus became the standing orders of the company and approval of the tribunal for the action taken by it becomes necessary under S. 33(2). The preliminary point raised by Sri Khambhatta is rejected.

7. The application will now be set down for hearing on merits.