

(1965) 10 PAT CK 0015

In the Patna High Court

Case No : Misc. Judl. Case No. 721 of 1962

Ballarpur Collieries Company

APPELLANT

Vs

Salim M. Merchant and Another

RESPONDENT

Date of Decision : 28-10-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 23, 24

Citation : AIR 1966 Patna 219 : (1967) 2 LLJ 201

Hon'ble Judges : R.L. Narasimham, C.J; S.N.P. Singh, J

Bench : Division Bench

Advocate : S.N. Bhattacharyya, C.B. Sahay and C.N. Nagle, for the Appellant;

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application for quashing an order passed by the Presiding Officer, Central Government Industrial Tribunal, Dhanbad, on the 16th April, 1962, in Bonus Appeal No. 12 of 1960, and for other consequential reliefs.

2. The petitioner is a firm of colliery owners in Dhanbad. In January-February, 1960, their workers went on strike by way of protest against the suspension of three workers for having caused derailment of coal-tubs. The Regional Labour Commissioner (Central), Bombay, intervened in the dispute and brought about an agreement between the employer and the workmen. It is unnecessary to refer in detail all the terms of the agreement (Annexure D), but it is sufficient to say that the strike was in due course called off and the labourers also assured the said officer that "they would see that such strikes are not resorted to in future and would adopt all constitutional means to get their grievances redressed".

3. On the 23rd May, 1960, the Central Government, in exercise of the power conferred by Section 36A of the Industrial Disputes Act, referred to one Shri G. Palit, Chairman, Central Government Industrial Tribunal, Dhanbad, the following question, namely, "whether "Traffic" is to be placed in Grade II of the clerical

service in terms of the award". The award here referred to is the award dated the 18th May, 1956, known as the Majumdar Award. During the course of the hearing of that reference (Reference No. 27 of 1960) before Shri Palit, some of the colliery owners (including the petitioner) in whose collieries there were no workmen with the designation of "Traffic" wanted to be excluded from the reference altogether on the ground that they were not interested in the dispute pending before the said Tribunal. The petitioner made such an application in August, 1960, stating as follows:

"So far as the petitioner is concerned this dispute does not concern these collieries because [hey have not got any traffic in employees coming under this category. As such the presence of the petitioner before this Tribunal is not necessary."

No express order either granting permission to the petitioner to withdraw from the dispute or refusing to grant such permission was passed by the Tribunal then. But thereafter the petitioner did not take any part in the proceeding before Shri Palit, and the workers of the petitioner's colliery also did not take any steps to participate in the said reference. But in the award given by Shri Palit (known as Palit's Award), which was published in the Gazette of India on the 22nd November, 1960, this application of the petitioner and other colliery owners was referred to in paragraph 8 as follows :

"Then with reference to the contention of some of the collieries that where the workmen designated as "traffics" do not occur, their names should be omitted from the present reference u/s 18(3) of the Industrial Disputes Act, 1947. But this section has been wrongly invoked here. In the present case I have not summoned them in pursuance of the said section. So the question does not arise whether they were so summoned without proper cause. They have been summoned in the present case because they were parties to the original award. I have to summon all the parties who were impleaded in the original Coal Award. So this contention is overruled. In an omnibus or industry-wise reference it is not necessary that the dispute must relate to each one of them or the cause of action must exist in all cases. Even if the dispute is not there but they are made parties in the reference all that may be said is that they are under no obligation to implement the Award. But the award will be binding on all of them all the same. So I am unable to exclude them. (See the Gazette of India, dated the 26th November, 1960, Part I, Section 1, page 255)."

4. Prior to the date of the Palit's Award, however, the workers of the colliery went on strike from the 4th October, 1960. The cause of the strike was the dismissal of six workmen. The strike was resorted to without due notice, though under Standing Order No. 32 of the Standing Orders, which have been approved by the statutory authorities, the labourers were bound to give fourteen days notice before going on strike. Hence, on the 31st October, 1960, the employer filed an application before the Regional Labour Commissioner (Central) in pursuance of sub-paragraph (1) of paragraph 8 of the Coal Mines Bonus Scheme

for a declaration that the strike was illegal. The Regional Commissioner, however, held the strike to be legal, and thereupon the petitioner employer filed an appeal before the Industrial Tribunal as permitted by sub-paragraph (4) of paragraph 8 of the said scheme, and as he was unsuccessful before the appellate authority, the petitioner has sought relief from this Court in exercise of its extraordinary jurisdiction.

5. Mr. Bhattacharyya for the petitioner quite properly conceded that, as the Industrial Tribunal is a quasi judicial body, the order passed by it, in exercise of its appellate jurisdiction, cannot be interfered with by this Court, in exercise of its powers of certiorari, unless he could succeed in establishing that there were errors of law apparent on the face of the record in the judgment of the Tribunal.

6. The definition of "illegal strike", as given in Clause (d) of paragraph 2 of the said scheme, is as follows:

" "illegal strike" means a strike which is illegal within the meaning of Section 24 of the Industrial Disputes Act, 1947 (XIV of 1947)."

Section 24 of the Industrial Disputes Act (hereafter referred to as "the Act") says in Clause (i) of Sub-section (1) that a strike in contravention of Section 22 or Section 23 of the Act shall be illegal. Section 22 has obviously no application, because the industry concerned is not a public utility service, and the sole question for consideration before the lower authorities and before this Court is whether the workers went on strike in contravention of the provisions of Section 23 of the Act. Section 23 is as follows:

"23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

On behalf of the employer three reasons were given for a declaration that the strike was illegal:

(1) The strike took place during the pendency of Reference No. 27 of 1960 before Shri Palit, and consequently Clause (b) of Section 23 would apply.

(2) The strike took place during the pendency of the settlement effected by the Regional Labour Commissioner, Bombay, while settling the dispute which arose out of the strike in January-February, 1960, and consequently Clause (c) of Section 23 of the Act would apply.

(3) In any view of the case, as the labourers resorted to strike without giving due notice as required by Standing Order No. 32, the strike was in breach of a contract between the employer and its workmen and was, therefore, illegal. In our opinion the learned appellate authority rightly rejected all these three contentions.

7. Taking the last contention first, it may be pointed out that a mere breach of a Standing Order is not sufficient to make a strike illegal under Sections 23 and 24 of the Act. It may be that the Standing Order after having been approved by the statutory authority regulates the contractual relationship between the workmen and the employer and any strike in contravention of the terms of the Standing Order may be a strike in breach of contract, but Section 23 does not say that a strike in breach of contract is by itself sufficient to make the strike illegal. On the other hand, that section shows that, apart from breach of contract, the other conditions required by Clauses (a), (b) or (c) of that section must be fulfilled before a strike can be held to be illegal, that is to say, it must have taken place during the pendency of conciliation proceedings, or during the pendency of proceedings before the Tribunal, or during any period in which the settlement in respect of any of the matters covered by the settlement is in operation.

8. The next question for consideration is whether Clause (c) of Section 23 would apply. The learned appellate authority, agreeing with the lower authority, held that there was no formal conciliation proceeding resulting in any settlement of a dispute as required by the Act when the Regional Labour Commissioner of Bombay intervened in respect of the earlier strike and effected some sort of settlement between the workmen and the employer. According to the Tribunal, the Labour Commissioner merely used his good offices and did not act in terms of the statutory provisions in the Act dealing with conciliation proceedings. Alternately he held that, even if the settlement by the Labour Commissioner be deemed to be a settlement under the Act, nevertheless "the matters covered by the settlement" of the Labour Commissioner are not the same as the matters in dispute at the time of the strike on the 4th October, 1960.

Hence, according to him, Clause (c) of Section 23 has no application.

It will be noticed that the earlier strike was due to suspension of three workers for causing derailment of coal-tubs. This was the matter in dispute before the Regional Labour Commissioner of Bombay, and the settlement of February, 1960, dealt with that matter. It is true he got from the workers an assurance that such strikes would not be resorted to in future and that they would adopt all constitutional means to get their grievances redressed. But on account of this assurance it cannot be said that all future disputes between the workmen and their employers must also be deemed to have been covered by the settlement. The strike in question took place on the 4th October, 1960, on account of the dismissal of six workmen. In our opinion the appellate authority was right in saying that the matters covered by the settlement of the Regional Commissioner of Bombay of February, 1960, are not the same as the matters in dispute for

which the impugned strike took place, and hence, even if the settlement made by the Regional Commissioner of Bombay in February, 1960, be held to have continued in operation, Clause (c) of Section 23 cannot have any application.

9. In this connection I may refer to *Provat Kumar Kar and Others Vs. William Trevelyan Curties Parkar, and Jeypore Sugar Co. Ltd. v. Their Employees* 1955 II LLJ 444 (LATI--Cal). In the aforesaid Calcutta decision their Lordships noticed the difference in language between Clause (c) and Clauses (a) and (b) of Section 23 and held that the scope of Clause (c) was very much restricted by the words "in respect of any of the matters covered by the settlement". In *Jeypore Sugar Co.'s* case 1955 II LLJ 444 (LATI--Cal) the facts were very similar to the facts in the present case. There also before the Conciliation Officer the Labour Union gave an undertaking that they will not go on strike till the next crushing season. But notwithstanding this undertaking they went on strike over a dispute about the alleged assault of a workman by an officer of the employer. The learned Tribunal observed:

"Any such dispute over an alleged assault of an employee by a chief engineer of the company could not have been even in contemplation of the union at that time. The only reasonable interpretation of that undertaking seems to us to be that it referred to strikes over the disputed matters settled by that agreement."

Here also, when the labourers gave an assurance before the Conciliation Officer in February, 1960, that they will resort to constitutional methods for the redress of their grievances, they could not possibly have contemplated that the employer would dismiss six of the workmen on the 4th October, 1960, more than seven months later, necessitating the strike. Hence the dispute which arose in consequence of the strike in October, 1960, could not be said to have been a dispute "covered by the settlement" of February, 1960, within the meaning of Section 23(c) of the Act. In our opinion, therefore, no error of law apparent on the face of the record arises in the order of the Tribunal rejecting the contention of the employer based on Clause (c) of Section 23.

10. Then remains the question as to whether Clause (b) of Section 23 has any application here. It is true that the reference before Shri Palit in Reference No. 27 of 1960 was pending on the date of the strike and it was disposed of by him only on the 31st October, 1960, though his award was actually published in the Gazette of India on the 22nd November, 1960. But as early as August 1960, the petitioner firm itself had applied before Shri Palit to be discharged from the proceeding on the ground that the dispute pending before Shri Palit did not concern the petitioner's collieries. Since the date of the application they took no part in the proceeding, and the judgment of the appellate authority further shows that the labourers also took no steps whatsoever to prosecute Reference No. 27 of 1960 "as in fact they could not possibly have done in the absence of any traffics in the colliery". Thus the fact found by the lower authority is that neither the present employer nor his workmen took any part in the reference pending before Shri Palit.

11. It was, however, urged by Mr. Bhattacharyya for the petitioner that unless the Tribunal passes some order of discharge the petitioner cannot, in law, claim to have ceased to become a party to the reference pending before the said Tribunal, and that inasmuch as in the award given by Shri Palit it was expressly stated in paragraph 8 (quoted above) that the petitioner was bound by the award, whether they were parties or not, it must be held that the petitioner was also a party in the said reference pending on the date of the strike.

12. This leads to the most important question of law for decision here, namely, whether in a reference before the Tribunal u/s 36A of the Act a person who is summoned as a party can cease to be a party in the eye of law merely by filing an application before the said Tribunal dissociating himself from the proceeding and subsequently declining to take any part in the proceeding, especially when the rival party, namely, the workmen in this case, did not object to his dissociating himself from the proceeding and did not themselves take any part in the proceeding. The answer to this depends on a careful consideration of the statutory provisions dealing with the procedure to be adopted by the Tribunals functioning under the Act. Sub-section (1) of Section 11 of the Act says that the Tribunal shall follow such procedure as it may think fit, subject, of course, to the rules made under the Act. It is true that Sub-section (3) of Section 11 says that certain provisions of the CPC would apply in all proceedings before the Tribunal. But those provisions deal with some other matters and not with the main question for consideration here, namely, at what stage can a party withdraw from the reference and, if so, whether the permission of the Tribunal is required for such withdrawal. The Industrial Disputes (Central) Rules, 1957, also contains no express provision dealing with this matter, though part III of the said rules contains detailed provisions regarding the procedure to be followed by the Tribunal.

Thus in the absence of an express statutory provision either in the Act or in the rules made thereunder, requiring the permission of the Tribunal before a person who is summoned as a party to a reference can withdraw from the reference, it cannot be said as a proposition of law that without such permission from the Tribunal that person continues to be a party. The question then becomes essentially a question of fact as to when he ceases to be a party, which will again depend on the date on which he expressed his unequivocal intention to withdraw from the reference and his own subsequent conduct and also the conduct of the rival party, namely, the workmen. If an employer wants to dissociate himself from a reference pending before a Tribunal, on the ground that he is not interested in the dispute, but his workmen object to his withdrawal, the Tribunal might then possibly have power to decide this question also. It is unnecessary however, to elaborate this point here, because on the finding of the appellate authority neither the workmen nor their Trade Union took any steps to prosecute their case in Reference No. 27 of 960 pending before Shri Palit. The Tribunal, therefore, on the aforesaid facts, and also on the fact that the petitioner's application before the Labour Commissioner, dated the 31st October, 1960, under

paragraph 8 of the Coal Mines Bonus Scheme, for a declaration that the strike was illegal, did not take this as one of the grounds for declaring the strike to be illegal, held that the petitioners and their workmen were not parties in the proceeding pending before Shri Palit, and that, consequently, Clause (b) of Section 23 has no application.

13. I see no error of law apparent on the face of the record in this conclusion, especially as there is no statutory provision dealing with the subject. Some argument was advanced on the basis of Clause (b) of Sub-section (3) of Section 18 of the Act. This clause has been construed by their Lordships of the Supreme Court in *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, . But it is unnecessary to discuss this provision here because in paragraph 8 of Palit's Award (already quoted) it is clearly said that he did not summon the petitioner u/s 18(3)(b) of the Act, but he merely summoned him because the petitioner was one of the parties to the original coal award known as Mazumdar Award. To quote Shri Palit himself, "in an omnibus or industry-wise reference it is not necessary that the dispute must relate to each one of them or the cause of action must exist in all cases". This observation seems to imply that there was no dispute between the petitioner and his workmen pending before the said Tribunal when the said reference was being heard. The fact that they are also bound by his award is not relevant for considering whether they were parties in a pending proceeding for the limited purpose of applying the provisions of Clause (b) of Section 23 of the Act.

14. For these reasons I see no ground for interfering with the order of the appellate authority. This application is dismissed without costs as there is no appearance for the other side.

S.N.P. Singh, J.

15. I agree.