

(1957) 02 PAT CK 0011

In the Patna High Court

Case No : Misc. Judl. Case No. 52 of 1956

Basawan Singh and Others

APPELLANT

Vs

Rohtas Industries Ltd. and Others

RESPONDENT

Date of Decision : 28-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(2), 2

Citation : AIR 1957 Patna 493

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : B.C. Ghose and Kanhaiya Prasad Varma, for the Appellant; Govt. Pleader, A.B.N. Sinha, Krishna Prakash Singh and R.N. Tewari, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—In this case, 2014 persons, including 2010 workmen of the Rohtas Industries Ltd., Dalmianagar, have presented the application under Article 226 of the Constitution for a writ in the nature of certiorari to quash the settlement made between the Management and some workmen on 8-12-55. Petitioner No. 1 is the President of the Rohtas Industries Maz-Door Sangh, and petitioner No. 2 is its General Secretary, Petitioner No. 3 is the President and Petitioner No. 4 the Secretary of the Dalmianagar Staff Employees' Union. The other petitioners are the members of either the said Mazdoor Sangh or the said Staff Employees' Union. There is another union of the workmen of the Rohtas Industries Ltd., Dahmianagar, called the Dalmianagar Mazdoor Seva Sangh, of which opposite parties, Nos. 4 and 5 are, respectively, the President and General Secretary. There is also another Union called the Rohtas Industries Staff Union, and opposite parties Nos. 6 and 7 are, respectively, the Vice-President and General Secretary of this Union. Opposite Parties Nos. 1, 2 and 3 are respectively, the Rohtas Industries Ltd., its General Secretary and its Works Manager. Opposite party No. 8 is R.N. Pandey, Conciliation Officer, Commissioner of Labour and Registrar, Trade Unions, Bihar. On 22nd October, 1955, the Rohtas

Industries Mazdoor Sangh made certain demands on the works Manager (Opposite Party) of the Rohtas Industries Ltd. These demands have been enumerated in paragraph 6 of the petition. A demand for bonus of 9 months' basic wages for the year 1953-54 was also submitted by the Dalmianagar Staff Employees' Union on behalf of the staff to the Works Manager on 12th July, 1955. When the demands were not accepted, a final notice of strike was given on 2nd November, 1955 (Annexure H to the petition). Similarly, a demand to make the payment of the bonus for the year 1952-53 and to declare the bonus for the year 1953-54 with a strike notice was made by the Dalmianagar Mazdoor Seva Sangh on 14th October, 1955 (vide Annexure H). Again, the Rohtas Industries Staff Union by a letter to the Works Manager dated 1st November, 1955, made a demand for a bonus of nine months' basic wages for 1953-54, but without any strike notice (vide Annexure O). In this state of affairs, the Conciliation Officer (opposite party No. 8) initiated a proceeding for composition of the differences. In this proceeding, the Conciliation Officer, it is said, conducted Consultations only with opposite parties Nos. 4 to 7, who are the officers of the Dalmianagar Mazdoor Seva Sangh and Rohtas Industries Staff Union and did not allow audience to the petitioners and their Unions. On 14th November, 1955, the petitioners applied to the Conciliation Officer for being made parties to the conciliation proceeding. Similar prayer was made by the Dalmianagar Staff Employees Union on 15th November, 1955, and 3rd December, 1955 (vide Annexures I and L), but these applications were not allowed, and the Rohtas Industries Mazdoor Sangh and the Dalmianagar Staff Employees' Union were not made parties to the conciliation proceeding. On 8th December, 1955, a settlement was arrived at between opposite parties Nos. 2 to 7 representing the Rohtas Industries Ltd., on the one hand and the Dalmianagar Mazdoor Seva Sangh and the Rohtas Industries Staff Union on the other. The copy of the settlement is Annexure A to the petition.

By this agreement, the bonus for the year 1953-54 was fixed at varying rates for different categories of workmen, and for the next four years, i.e., for the years 1954-55 to 1957-58 the bonus was fixed at 3 1/2 months' basic wages. It was further provided in the agreement that there shall be complete industrial truce between the Management and its workmen till 31st October, 1958, and no demands in respect of major items, like bonus, minimum wages, grades, provident fund, gratuity, house and dearness allowances shall be raised by the union on behalf of the workmen.

The case of the petitioners is that this settlement is not binding upon them as they were not properly represented and. is further illegal. Three counter-affidavits have been filed the first on behalf of the Management, (opposite parties Nos. 1 to 3), the second on behalf of the Dalmianagar Mazdoor Seva Sangh (opposite parties Nos. 4 and 5) and the third on behalf of the Rohtas Industries Staff Union (Opposite Parties 6 and 7) traversing the allegations of the petitioners.

2. The contention of Mr. B.C. Ghose on behalf of the petitioners is two-fold, first, that the settlement of the disputes arrived at between the Management (opposite parties Nos. 1 to 3) and the Dalmianagar Mazdoor Seva Sangh and the Rohtas Industries Staff Union through their office-bearers, opposite parties Nos. 4 to 7, in course of the conciliation proceeding conducted by opposite party No. 8 is not binding upon the petitioners, because they are not parties to the conciliation proceeding and is, therefore illegal.

The application of the petitioners for being added as Parties to the conciliation proceeding was disallowed by the Conciliation Officer on the ground that their unions were not recognised by the Management. Mr. Ghose contended that the recognition of the unions by the management was not necessary for valid representation of the workmen in any proceeding under the Industrial Disputes Act. His contention is that the Rohtas Industries Mazdoor Sangh and the Dalmianagar Staff Employees' Union are registered trade unions and all that is required by Section 36 of the Industrial Disputes Act is that a workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member.

It is urged that all the workmen who are petitioners in this application are members of either the Rohtas Industries Mazdoor Sangh or the Dalmianagar Staff Employees' Union, and, therefore, they were entitled to be represented through the officers of the said unions as required by Section 36. It is said that when their prayer for representation was wrongly refused by the Conciliation Officer, any settlement arrived at in the said proceeding will not bind the workmen, because, as provided in Section 18 of the Industrial Disputes Act, a settlement arrived at in the course of the conciliation proceeding shall be binding on only those who are parties to the industrial dispute. His second contention is that the fixation of bonus by virtue of the settlement for future years was illegal and invalid, because in absence of the profits which form the basis of the bonus, no bonus could be determined at all.

3. Learned Counsel appearing on behalf of the opposite party contended, on the other hand, that on the facts alleged in the petition, the petitioners were not entitled to a writ of certiorari, or a mandamus, or any other writ. His submission is that the petitioners do not impugn the legality of the settlement so far as it goes and that when their only grievance is that it was not binding upon them as they were not represented in the conciliation proceeding, they should seek their remedy by appropriate proceeding under the Industrial Disputes Act. His alternative contention is that even if the order was invalid for any reason, the petitioners were estopped from challenging it, because they had accepted unconditionally the benefit of the settlement in the shape of bonus as provided therein.

His submission with regard to the bonus was that the Industrial Disputes Act did not forbid settlement of bonus for future years. He referred to Section 19 of the said Act and contended that the settlement arrived at in the course of the

conciliation proceeding shall be binding for such period as is agreed upon by the parties. He pointed out that there was no limitation u/s 19 as to the period of operation of the settlement or as to the subject-matter of the settlement. He submitted that it was open to workmen and the management to come to any agreement regarding bonus for any number of years.

4. The contention urged on behalf of the opposite party seems to be well-founded. If the petitioners consider that the settlement does not bind them because they were not represented and were not afforded an opportunity of being heard and the Management thinks to the Contrary, it is clearly a case of difference between the Management and the petitioners as to whether or not the settlement is binding upon the latter. This difference is itself an industrial dispute. As defined by Section 2(k) of the Act, "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.

It is manifest that a difference has arisen between the parties as regards both the binding character of the settlement and the period of its operation. This difference constitutes Industrial Dispute within the meaning of Section 2(k), for which remedy, and, I think, an effective remedy, is provided in the Act itself. In the circumstances, the present application is based upon misconception of the legal position. The quashing of the settlement or a declaration that the settlement is not binding upon the petitioners will not serve the purpose; the dispute will continue.

When differences have arisen as to the extent and scope of the settlement, it is clearly an industrial dispute, and it is for the State Government to make in their discretion, a reference under Sub-section (1) or for the petitioners to make an application under Sub-section (2), of Section 10 of the Act. When a more effective and expeditious remedy is available under the Act itself, the petitioners are, in my opinion, not entitled to any writ.

5. For these reasons, the application is dismissed. In the circumstances, of the case, there will be no order for costs.

Ramaswami, C.J.

6. I agree.