

(1975) 09 KL CK 0005
In the High Court Of Kerala

Bhaskaran Nair

APPELLANT

Vs

Management, Premier Tyres Limited and Another

RESPONDENT

Date of Decision : 23-09-1975

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 33, 33A

Citation : (1976) 2 LLJ 101

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Judgement

T. Chandrasekhara Menon, J.—The award of the Industrial Tribunal, Calicut, in Industrial Dispute No. 30 of 1972, dismissing the complaint of the petitioner u/s 33(A) of the Industrial Disputes Act, questioning the order of the Management transferring him from the company's factory to the company's sales division, is under attack in this original petition.

2. The petitioner was working as Supervisor (Garden, House Keeping and Seraps) in the Premier Tyres Ltd., Kalamassery. He was placed under suspension pending enquiry for alleged misconduct. The misconduct alleged were, wilful disobedience of lawful and reasonable orders of superiors, striking work, inciting others in striking work in contravention of law, initiating, conducting and participating in strike against law and conducting and attending meeting in the premises of the factory without the permission of the management on 8-12-1969. An enquiry was conducted in respect of the charges levelled against the petitioner by one O.T.K. Nambiar. The petitioner was found guilty of the charges levelled against him. The finding was accepted by the management and the petitioner was dismissed with effect from the date of suspension. At that time the petitioner was General Secretary of Premier Tyres Employees Association, On behalf of the petitioner, an industrial dispute was raised as regards the dismissal. This dispute was referred to the Industrial Tribunal, Alleppey. It had been contended in the dispute that the dismissal was on the grounds of victimisation and it was further contended that the findings in the enquiry were perverse,

apart from the allegation that the enquiry proceedings were vitiated on the ground of violation of the principles, of natural justice. The company resisted these contentions. The Industrial Tribunal, Alleppey, by award dated 16th October, 1971 and published in the Kerala Gazette dated 2nd November, 1971, set aside the dismissal and directed reinstatement of the petitioner with back arrears. The Management filed writ petition in this Court as O.P. No. 5436 of 1971. The original petition was dismissed and an appeal filed in the matter before the Division Bench was also rejected in limine. Consequently, the petitioner was reinstated in service on 11th May, 1972.

3. Subsequently on 23rd May, 1972, the petitioner was transferred to sales depot of the company at Ernakulam and then again transferred to Cannanore. According to the petitioner, his chances of promotion in the factory were affected by this transfer. His emoluments were also considerably reduced. At the time of transfer, two Industrial Disputes were pending, before the Industrial Tribunal, Calicut, the second respondent, as well as before the Labour Court, Quilon. The industrial dispute pending before the second respondent as ID. No. 3 of 1971 was regarding the charter of demands submitted by the premier Tyres Employees Association as well as the Premier Tyres Workers Union and also regarding bonus for the year 1969. The dispute before the Labour Court, Quilon, was regarding the dismissal of a worker by name Abdul Khader, which dispute, has been sponsored by the petitioner's union, viz., Premier Tyres Employees Association. The said dispute was referred to the Industrial Tribunal, Calicut, since the conciliation failed. I.D. No. 3 of 1971 was disposed of by an award dated 24-3-1973 and published in the Government Gazette dated 15th May, 1973.

4. Or the allegation that the petitioner's conditions of service were varied to his disadvantage during the pendency of the two disputes, without the permission of the Industrial tribunal or the Labour Court, the petitioner moved an application u/s 33(A) of the Industrial Disputes Act before the second respondent which application has been re-numbered as I.D. No. 30/1972. It is the award dismissing the complaint that is under challenge in this original petition.

5. The petitioner contends that the award marked as Ext. P1 in the case is vitiated by error apparent on the face of the record. The petitioner is a person connected with the dispute as mentioned in Section 33(1)(a) and (b). It is further contended that his conditions of service were altered to his prejudice by his transfer to the sales depot where the salary and promotion chances were considerably reduced. It is also pointed out that the other item which was referred to the second respondent in I.D. No. 3 of 1971 was regarding the quantum of bonus in 1971, and as the petitioner was transferred only in May, 1971, he should be deemed to have been working in the factory at Kalamassery during the year and the bonus for the year 1969 was not settled nor decided. There-fore, the petitioner is connected in the said dispute u/s 33(1)(a) of the Industrial Disputes Act.

6. It is also contended that the petitioner was governed by W.I standing order

framed under the Industrial Employment (Standing Order) Act, 1946, subject to his contention that the Management has no right to frame a standing order with regard to his transfer from one establishment to another establishment. This, according to the petitioner, would show that the petitioner was prejudicially affected since the employees working in the sales depot are not governed by W1 standing order. It is argued that the conclusion of the second respondent that as per Clause 30 of W1 the petitioner is liable to be transferred from the factory Kalamassery to another establishment of the company inside or outside the State of Kerala whether the said establishment is in existence at the time of engagement or the transfer of the workmen, is vitiated, because, such a clause is illegal and the authority constituted under Standing Orders Act is not competent to certify an order in the nature mentioned in Clause 30. The basis of this argument is that the certifying authority of the Industrial Employment Standing Orders Act, 1946 can certify only standing orders mentioned in Section 2(g) of "the Standing Orders Act. Section 2(g) defines standing orders as rules relating to matters set out in the schedules. u/s 3(2) of the said Act standing orders should contain only matters set out in the schedule and which may be applicable to the industrial establishment. It is contended that transfer is not an item in the matters included in the schedule. The petitioner contends that the second respondent ought to have found that he has ample jurisdiction to quash the transfer without directing the petitioner to raise an industrial dispute.

7. In the counter-affidavit filed on behalf of the second respondent-company, the management, it is stated that the petitioner did not establish that there had been an alteration of the service conditions in regard to any matter connected with the dispute. Under the standing orders applicable to the petitioner, the workmen are liable to be transferred from the factory at Kalamassery to any other establishment of the company. The transfer is said to be not in any way prejudicial to the petitioner at all. As a Sales Supervisor, his basic pay was Rs. 220 and in addition he is to get a supervisory allowance of Rs. 100 and D.A. (approximately) of Rs. 170. In transferring him from the factory to the company's sales division, the management, have not in any manner changed the conditions of service applicable to him to his prejudice. His transfer was not a matter connected with the dispute and, therefore, the management submits that the complaint filed u/s 33(A) of the Industrial Disputes Act was not at all maintainable and Ext. P1 perfectly valid.

8. The question before me is whether the award is in any way vitiated by error apparent on the face of the record. Exhibit P1 dismisses the complaint on two grounds (1) the petitioner is not connected with the industrial dispute pending, and (2) the standing order provided for transfer of workmen from factory to other establishments of the company inside or outside the State of Kerala whether such establishment is in existence at the time of the engagement or not.

9. In regard to the question whether the petitioner is connected with the industrial dispute pending, what the management states is that the petitioner

was not concerned with the industrial dispute then pending. It is pointed out that the document produced before the Tribunal and marked as W14 which is the printed copy of the award of the Industrial Tribunal in the matter, does not show the issues referred for adjudication. The petitioner should have produced the charter of demands and the charter of demands would have specifically mentioned the issues. The petitioner has only produced the preliminary written statement filed by the management in the case which would not indicate the issues that had been referred to in the concerned industrial dispute. This contention of the management has been accepted by the Tribunal. The ban imposed by Section 33(1)(a) being a ban in regard to the matter connected with the dispute, it is for the worker to establish that the transfer was also a matter connected with the dispute. As he has failed to produce the charter of demand, it is stated, he has failed to establish that the transfer concerned of the petitioner was in any way connected with the dispute. It is pointed out by the petitioner, that ID. No. 3 of 1971, the Industrial Dispute concerned was referred to the Industrial Tribunal after conciliations failed in respect of the charter of demands submitted by the Premier Tyres Employees Association of which the petitioner was the Secretary. The conciliation proceedings itself was started on the basis of settlement entered into between the first respondent-factory and the unions representing all the workmen which were functioning then. The said conciliation agreement was dated 28th February, 1970 and it is stated that the petitioner's union was also a signatory to the said settlement. The petitioner points out that I.D. No. 3 of 1971 was referred to the Tribunal by the Government on the failure of the conciliation, pursuant to the memorandum of settlement dated 28-2-1970. The copy of memorandum of settlement has been produced before the Industrial Tribunal and marked as W8. The same is marked as Ext. P3 in this original petition, having been produced along with the reply affidavit.

10. In Ext. P3, it is stated that an industrial dispute arose between the management of Premier Tyres Ltd., and their workmen represented by the unions mentioned in the memorandum of settlement, Ext. P3, regarding the bonus for the year 1968-69. When direct negotiations between the parties failed the workmen struck work with effect from 11-12-1969. It is stated further in Ext. P3 that a number of conciliation conferences were held by the Labour Commissioner to resolve the dispute and a final settlement was arrived at in the final conciliation conference held by the Labour Commissioner at Trivandrum on 28-2-1970. The Premier Tyres Employees Association in which the petitioner is the Secretary in one of the unions mentioned in Ext. P3.

11. Sections 33(1), (2) & (3) of the Industrial Disputes Act is as follows:

(1) During the pendency of any conciliation proceeding before an arbitrator or a Conciliation Officer or a Board or of any proceeding before Labour Court or Tribunal or National Tribunal in respect of an Industrial Dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of

the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending,

(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 or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that 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) Notwithstanding anything contained in Sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

(a) by altering to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman;

save with the express permission in writing of the authority before which the proceeding is pending,

Explanation--For the purposes of this sub-section, a "protected work man", in relation to an establishment means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

12. Who is a "workmen concerned in the dispute" has come up for consideration by the Supreme Court in some cases, in *Bengal Nagpur Cotton Mills Ltd. Vs. State of Madhya Pradesh and Others*, , the Supreme Court said that even as a matter of construction pure and simple there is no justification for assuming that the workmen, concerned in such dispute must be workmen directly or

immediately concerned in the said dispute. It was said that there is no justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen, acting on their own or through their union, then it would be difficult to reset the conclusion that all those who sponsored the dispute are concerned in it. The Supreme Court observed further, that this construction is harmonious with the definition prescribed by Section 2(a) and with the provisions contained in Section 18 of the Act. It was further observed in that decision that the Court was not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. It was the Court's opinion that the expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute.

13. This principle is not a new one laid down by the Supreme Court. As early as 1951 the Labour Appellate Tribunal of India had said: (*Eastern Plywood Mfg. Co. Ltd. v. Eastern Plywood Mfg. Workers' Union* 1952 I L.L.J. 628).

The Industrial Dispute Act contemplates proceedings in respect of collective disputes between workmen on one side and the employer on the other. This is indicated not only by the definition of "industrial dispute" but also by Section 18 of the Act. Whether an individual dispute would fall within that definition or not is a matter which is pending consideration by this Tribunal. If it does, and either conciliation or adjudication proceedings are started in respect of such a dispute by the individual himself, other workmen employed in the same undertaking cannot be said to be concerned therein, but where the dispute which is the subject-matter of those proceedings is a collective one, the other workmen would certainly be concerned therein, for, they are or must be considered to be parties to the proceedings. Equally so would the other workmen of the undertaking be concerned therein if the settlement arrived at or award made therein be binding in them. This, in our opinion, is the significance of the words "concerned" used in Section 33. In the case of *Serampore Belting Mazdoor Union v. The Serampore Belting Co.* 1951 II L.L.J. 341, this Tribunal pointed out that one of the considerations which the Legislature had in view in enacting 33 was to ensure a fair and satisfactory enquiry in the pending adjudication proceedings by forging a safeguard against victimisation, or unfair labour practice on the part of the employer with regard to employees concerned in the adjudication proceedings and this object would not be attained if a restricted meaning be given to the words "concerned in such a dispute" as has been done by Shri Das Gupta in the two awards noticed above.

(Underlining is mine).

14. In *Digwadih Colliery and Ramji Singh* 1964 II L.L.J. 143, the Supreme Court

said: "It is necessary to enquire what was the subject-matter of the industrial dispute concerned. It is pointed out therein that the petitioner filing an application u/s 33(A) should have satisfied the Tribunal By proving the nature of the dispute during the pendency of which the Act which gave rise to the application u/s 33(A) was filed, before asking the Tribunal to make a finding in his favour u/s 33(2) and in the absence of such evidence, the Tribunal was not justified in holding that Section 33(2) applied and had been contravened. On this decision, Mr. K.A. Nayar, learned Counsel for the management strongly relied on and said that in the impugned order that the Industrial Tribunal, Calicut was quite correct in dismissing the application, because, no relevant documents were produced before it to show what the issues that were actually referred to for adjudication in I.D. No. 3 of 1971. I might also refer to a decision of the Patna High Court in Cane Manager, New India Sugar Mills Ltd. Vs. Krishna Ballabh Jha and Others, where, it was said, the question whether a workman action against whom made u/s 33(2) of the Industrial Disputes Act. may be said to have been concerned in the dispute under reference pending adjudication must be decided on the basis whether there was some common feature in all the disputes which serve as a connecting link thereby rendering the workmen in the later case also, workmen concerned in the dispute in the earlier case. It was said that the mere fact that the same union has taken up the cause of the two workmen or else that by virtue of Section 18(3)(b) of the Act all workmen may be bound by the award in the earlier dispute may not suffice unless there is some other common feature as mentioned above.

15. In *Tata Iron & Steel Co. v. Singh* 1965 II L.L.J. 122, the Supreme Court had again considered the question. There, it was said:

The question about the construction of the words "a workman concerned in such dispute" which occur in Sections 33(1) and 33(2) has been the subject-matter of judicial decisions and somewhat inconsistent views had been taken by different High Courts on this point. Some High Courts construed the said words in a narrow way--vide *New Jehangir Vakil Mills Ltd., Bhavnagar Vs. Industrial Tribunal, Rajkot and Others*, , while others put a broader construction on them? vide *Eastern Plywood Manufacturing Company Ltd. v. Eastern Plywood Manufacturing Workers Union* 1952 I L.L.J. 628; *Newtone Studies, Ltd. v. Ethirajulu (T.R.) and Ors.* 1958 I L.L.J. 63 ; and *Andhra Scientific Co. Ltd., Masulipatam by the General Manager Vs. A. Seshagiri Rao and Another*, This problem was ultimately resolved by this Court in its two recent decisions, viz., *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, and *Diawadih Colliery v. Ramji Singh* 1964 II L.L.J. 143. In this latter case this Court considered the conflicting judicial decisions rendered by the different High Courts and has approved of the broader construction of the words " workmen concerned in such dispute." (Underline is mine).

There is some clerical slip in the last sentence because it is really in *Morris* case, viz., the former case the Supreme Court considered conflicting judicial decisions

and approved of the broader construction of the words "workmen concerned in such dispute." I had an occasion to consider this question in *Dalmia International Ltd. v. Thomas* ILR 1975 Ker 664: there, after referring to the Supreme Court cases, I said,--

In considering the question it is important to consider the nature of dispute before the Industrial Tribunal. Otherwise as held by the Supreme Court in *Digwadih Colliery v. Ramji Singh* 1964 II L.L.J. 143, it would plainly be impossible to decide whether the person involved is a workman concerned within the meaning of Section 33(2). The nature of the dispute should be such as would ordinarily affect the interests of the rest of the workmen or in which any principle applicable to the workman in general is involved, or when it could be said that it was a collective dispute on behalf of the workmen in general.

Therefore, the petitioner was certainly interested in the earlier dispute as it was a collective dispute on behalf of the workmen in general. In regard to the other question that is, whether the order of transfer was prejudicial to the existing conditions of service of the petitioner, there has not been a proper consideration of the question at all by the Industrial Tribunal. There is really no finding whether the transfer has prejudicially effected the existing conditions of service of the petitioner, even if the standing orders provide that workmen are liable to be transferred from factory at Kalamassery to any other establishments of the company inside or outside the State of Kerala, if such transfer really works out prejudicial to the petitioner and was a sort of victimisation on account of his trade union activities, then certainly such transfer would be violative of Section 33.

16. Therefore, I set aside Ext. P1 and remit back the matter to the second respondent for fresh consideration in accordance with law and in the light of what is stated above. The second respondent will dispose of the matter as expeditiously as possible.