

(1961) 08 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 393 of 1961 (with Special Civil Application No. 621 of 1961)

Bipat Beni

APPELLANT

Vs

Sawarkar P.D.

RESPONDENT

Date of Decision : 05-08-1961

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10A, 33(2)

Citation : (1962) 1 LLJ 61

Hon'ble Judges : Y.V. Chandrachud, J;D.V. Patel, J

Bench : Division Bench

Judgement

Patel, J.—This is an application by the petitioner under Art. 227 of the Constitution challenging the award of the industrial tribunal by which the tribunal dismissed the complaints of the petitioner and one other person holding that the complaints did not lie under S. 33(2) of the Industrial Disputes Act.

2. The short facts which gave rise to this application need be stated. Respondent 2 is a small manufacturer and to doing business in Bombay. The petitioner was one of the servants of respondent 2. In or about May 1960, an industrial dispute between respondent 2 and his workmen was referred to the industrial tribunal under S. 10A of the Industrial Disputes Act. The incident in respect of which the complaint under review was made occurred on 22 July 1960. After a fruitless complaint before the Labour Officer, this petitioner and another made two applications to the industrial tribunal in the month of August 1960 under S. 33A of the industrial Disputes Act. He alleged that on 22 July 1960, respondent 2 assaulted him and dismissed him from service. As the dismissal occurred during the pendency of the industrial dispute before the tribunal, he had a cause of complaint under S. 33(2) of the Act. In response to the notice issued by the tribunal, respondent 2 contended that it was the petitioner who assaulted the proprietor and after assaulting him left the premises and thereafter never returned to work. He also contended that the tribunal could not entertain the

complaint inasmuch as the case was not governed by S. 33(2) of the Act. The tribunal framed a preliminary issue regarding this latter contention and upholding it dismissed the complaint. It is this order that is sought to be challenged in this petition.

3. It may be noted that respondent 2 is a manufacturer who admittedly does not employ more than fifteen workmen. Consequently the Industrial Employment (Standing Orders) Act, 1946, does not apply to his establishment. He, therefore, contended that S. 33(2) of the Industrial Disputes Act does not apply to his establishment. At this stage it is necessary to note that the Industrial Employment (Standing Orders) Act, 1946, does not necessarily apply to all industrial establishments employing more than fifty workers. Section 13B provides that the Act would not apply to industrial establishments whose workmen are governed by Fundamental and Supplementary Rules Civil Services (Classification, Control and Appeal) Rules, Revised Leave Rules, Civil Service Regulations and such other similar rules which the appropriate Government may in that behalf notify in the gazette. Under S. 14 the Government is given powers to exempt such industrial establishments as it thinks fit. Under these circumstances standing orders may not apply to a large number of industrial establishments which are not small units and may compete as to the strength of employment with any large unit to which standing orders are applicable, such as, for example. Government establishments, establishments of local authorities or of corporation created by the State.

4. Section 33(2) runs as under :

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

(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."

5. It is argued relying on the italicized words that this sub-section protects the rights of only those employees who are governed by standing orders, and, therefore, no complaint lies by the petitioners. Sri Narayanaswami argues that that provision was intended to be applied only to large establishments governed by the Standing Orders Act and not small ones like the one belonging to opponent 2. It is contended that non-compliance with the section is made penal

and is punishable under S. 31A and, therefore, it should be strictly construed. This argument was accepted in the case of Antony (K.T.) v. Good Year Tyre and Rubber Company 1958 I L.L.J. 377. The argument may at first sight appear to be attractive, but cannot be accepted as will appear from the discussion below.

6. All statutes as all other documents must be construed fairly and reasonably and so construing, the intention of the maker must be ascertained. No doubt, if the language is plain and unambiguous it must be given effect to however inconvenient the result is.

"That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. "The literal construction then," says Maxwell on Interpretation of Statutes. 10th Edn., p. 19, "has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act;"... To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purpose thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language ..." [Per R.M.D. Chamarbaugwalla Vs. The Union of India (UOI),

7. We must keep these general principles in mind in construing the section.

8. Before amendment, S. 33 as it stood was as follows :

"No employer shall during the pendency of any conciliation proceedings or proceedings before a tribunal, in respect of any industrial 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 proceedings, nor, save with the express permission in writing of the conciliation officer, board or tribunal, as the case may be, shall during the pendency of such proceedings, discharge, dismiss, or otherwise punish any such workman, except for misconduct not connected with the dispute."

9. No change in conditions of service could be effected nor any workman punished, however urgent the need may be, without going through the procedure. The inconvenience of each a provision was immediately felt. Even though change was urgently needed, or where in the interest of discipline it was required that a workman be punished for an offence unconnected with the pending dispute, applications had to be made and there was consequent delay in taking action. Frequent complaints were thereupon made by the industry. To meet this grievance the section was amended and recast. It is divided into five sub-sections. Sub-section (1) provides for change for reasons connected with the industrial dispute, and provides that no change shall be made nor a workman punished for anything connected with the dispute except with the permission of the tribunal. Sub-section (2) makes provision for cases not connected with the dispute and provides that the employer may effect a change in the conditions of

service and punish a workman in matters not connected with the service subject to the qualification contained in the proviso. Sub-section (3) affords protection similar to Sub-section (1), to specially protected workmen in all cases and to an exception to Sub-section (2). Sub-section (4) provides for the principle of specifying protected workmen and Sub-section (5) directs that the Court or tribunal to which an application is made by an employer shall decide and dispose it off without delay. It is at once apparent that Sub-secs. (1), (3) and (5) must apply to workmen of all establishments and whether or not the standing order applied, and there could be no reason to create an exception in favour of establishment to which the Standing Orders Act did not apply in the case of Sub-section (2). The whole section replaced the earlier section, which undoubtedly applied to all establishments, and if one bears in mind the reason for the amendment, it must appear to have been intended to apply to all establishments, In enacting Sub-section (2), in this form, the intention was to see that the conditions of service of workmen were not changed or the workman was not dismissed contrary to standing orders if they were applicable. No doubt this section is inaptly drafted but it must be given a reasonable meaning. To accept the contention would lead to the absurd result that protection given will not apply to workmen of very large establishment merely because they are governed by a different code of service and not by standing orders. Again, distinction would not be between small and big establishments. It would be between those to which standing orders do not apply and those where they apply. Having regard to all these matters we are of the view that the section can only mean that

"During the pendency of any such proceedings in respect of an industrial dispute the employer may, (and) in accordance with the standing orders (if any) applicable to a workman concerned in such dispute ..."

10. The Rajasthan High Court has taken the same view in the case of Mansingh Vs. The Mewar Textile Mills Ltd., Bhilwara and Another, .

11. We are, therefore, of the view that the tribunal below was in error in holding that S. 33 did not apply to the present case and that the complaint was bound to fall.

12. In the result We set aside the award made by the tribunal and direct the tribunal to proceed farther with the case. The petitioner will get his costs.