

(1957) 08 CAL CK 0002
In the Calcutta High Court

Birendra Kumar Chatterjee and Others

APPELLANT

Vs

Reliance Jute Mills Company, Ltd.

RESPONDENT

Date of Decision : 23-08-1957

Acts Referred:

Constitution of India, 1950 — Article 154, 163, 166, 227

General Clauses Act, 1897 — Section 10, 21

Industrial Disputes Act, 1947 — Section 10, 20, 25, 33, 33A

Citation : 62 CWN 303 : (1958) 2 ILR (Cal) 505 : (1958) 2 LLJ 67

Hon'ble Judges : Sri Lahiri, J;Mitter, J

Bench : Division Bench

Judgement

Sri Lahiri, J.—This is a rule under Article 227 of the Constitution at the instance of 32 clerical employees of Reliance Jute Mills Company, Ltd., against an award made by the second industrial tribunal, Calcutta, rejecting their application u/s 33A of the Industrial Disputes Act on the ground that it had no jurisdiction to deal with that application. The facts which are material for the determination of this case may be briefly stated as follows.

2. As a result of closing down of 301 looms of the Reliance Jute Mills Company, Ltd., a large number of mechanical workers of that mill were retrenched and at the instance of the retrenched mechanical workers, an industrial dispute was raised and it was referred to the seventh industrial tribunal by order No. 3452-Dis/D/7L/5/65 bearing the date 7 August 1956, and signed by the Joint Secretary to the Government of West Bengal on 10 August 1956. By order No. 4168-Dis/D/ 7L/5/55, dated 17 September 1956, the State Government, in supersession of the previous order, referred the dispute to the second industrial tribunal. On 27 September 1956, the petitioners filed an application before the second industrial tribunal alleging that they had been discharged by the opposite party on 8 August 1956, during the pendency of proceedings before the seventh industrial tribunal without express permission in writing of the seventh industrial tribunal and as such the opposite party had contravened the provisions of Section 83 of the Industrial Disputes Act. The application filed by the petitioners

was u/s 33A of the aforesaid Act. Against the application filed by the petitioners two preliminary points were raised on behalf of the opposite party. The first point was to the effect that the industrial dispute between the petitioners and the opposite party had been referred to the seventh industrial tribunal not on 7 August 1956, but on 10 August 1956 on which the order of reference was actually signed by the Joint Secretary. The second objection was on the ground that the second industrial tribunal, before which the application u/s 33A had been filed, had no jurisdiction to deal with it, inasmuch as the act alleged against the opposite party had been committed at the time when the proceeding was pending before the seventh industrial tribunal. The learned Judge of the second industrial tribunal has upheld the second objection raised on "behalf of the opposite party but has overruled the first. Against that order the petitioners have obtained the present rule,

3. On behalf of the petitioners it is contended that when an industrial dispute is transferred from one tribunal to another, the order of transfer confers on the transferee tribunal all powers which vested in the original tribunal. It is contended that the power to deal with an application u/s 33A vested in the seventh tribunal to which the reference had been made by the State Government, and with the transfer of the reference from the seventh tribunal to the second tribunal by the order, dated 17 September 1956, the power to deal with the application u/s 33A had also been transferred. This argument seemed to be very attractive at first sight, but on closer scrutiny, it is found to be without substance. The Industrial Disputes Act, as it applies to Bengal, does not contain any provision enabling the State Government to transfer a reference from one tribunal to another but the power is exercised by the State Government u/s 21 of the Indian General Clauses Act. The actual words by which the transfer was made are as follows:

... whereas under the Government of West Bengal, Labour Department, order No. 3452-D18/D/7L-5/55, dated 7 August 1956, the said dispute was referred to the seventh industrial tribunal. . . and whereas it is expedient that the said reference should be withdrawn and the said dispute should be referred to another industrial tribunal . . . therefore, in exercise of the powers conferred by Section 10 of the said Act, read with Section 21 of the General Clauses Act, 1897, and in supersession of the aforesaid order No. 3452-Dis/D/7L-5/55, dated 7 August 1956, the Governor is pleased hereby to refer the said dispute to the second industrial tribunal ...

The plain effect of this order is to cancel the previous order of reference and to make a fresh order u/s 10 of the Industrial Disputes Act. The second industrial tribunal derived its jurisdiction under the second order of reference, dated 17 September 1956. It is not as if a pending case is transferred from one tribunal to another, but the true position is that the previous order of reference came to an end with the order of withdrawal, dated 17 September 1956, and a new reference came into existence by the order of transfer made on that date.

Section 33A provides that if:

an employer contravenes the provisions of Section 33 during the pendency of proceedings before the tribunal, any employee aggrieved by such contravention may make a complaint in writing in the prescribed manner to such tribunal.

The word "such" has reference to the tribunal before which the proceedings were pending. In the present case upon the allegations made by the petitioners In the application u/s 33A the act alleged against the opposite party was committed on 8 August 1956, on which date the proceedings were pending before the seventh industrial tribunal. Consequently the second industrial tribunal which derived its jurisdiction to deal with the reference under the order of the State Government, dated 17 September 1956, had no jurisdiction to entertain the application filed by the petitioners. The view taken by the learned Judge of the industrial tribunal on this point appears to be correct.

4. Mr. De, appearing for the opposite parties, has also contended that the learned Judge of the second industrial tribunal was wrong in overruling the point that the first order of reference was really made not on 7 August 1956, but on 10 August 1956. The learned Judge of the industrial tribunal has held that the order was passed by the Minister-in-charge of the Labour Department to the Government of West Bengal on 7 August 1956, though it was actually signed by the Joint Secretary on 10 August 1956. According to the learned Judge, the order became effective on the date on which the order was passed by the Minister-in-charge of the Labour Department and the fact that it was signed on a later date by the Joint Secretary, did not prevent the order from becoming effective from 7 August 1956. Mr. De has pointed out that the order passed by the State Government could not become complete till it was actually authenticated in the manner contemplated by Article 166(2) of the Constitution. Article 154 of the Constitution provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 166(2) provides that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. With regard to the authentication the following rule was made by the Governor of West Bengal :

In exercise of the powers conferred by Clause 2 of Article 166 of the Constitution of India and in suppraession of all previous rules made in this behalf, the Governor is pleased to make the following rules :

(1) * * *

(2) " Save in cases where an officer has been specially empowered to sign an order . . . of the Government of West Bengal, every such order or instrument shall be signed by either a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of West Bengal and such signature shall be deemed to be the proper authentication of such

orders ...

5. This is rule No. 2256 A.R., dated 25 August 1951. The combined effect of Clause (2) of Article 163 of the Constitution and the aforesaid rule is that the order of the State Government does not become effective and complete till it is authenticated in the manner contemplated by the Constitution. In the present case, the date of signature of the Joint Secretary was 10 August 1956. We are accordingly unable to hold that the order of first reference became effective before the date on which it was authenticated according to Article 166(2) of the Constitution, that is, before 10 August 1956. It is true that in the order, dated 17 September 1956, the previous order is referred to as an order, dated 7 August 1956, but this wrong reference in the second order will not make the first order constitutionally valid before 10 August 1956. We accordingly hold that the order of first reference became valid and effective on 10 August 1956, on which date it, was signed by the Joint Secretary. Accordingly, the act complained against the opposite party took place before the pendency of any reference before any industrial tribunal. Mr. De has also invited our attention to Section 20, Sub-section (3), of the Industrial Disputes Act which defines pendency of a proceeding before a tribunal. This section provides that a proceeding before a tribunal shall be deemed to have commenced on the date of the reference of the dispute for adjudication and shall be deemed to have been concluded on the date on which the award becomes enforceable. In view of the fact that the order of reference u/s 10 of the Industrial Disputes Act was signed on 10 August 1956, we hold that the date of the reference of the dispute for adjudication to the seventh industrial tribunal was 10 August 1956. Accordingly, we hold, in disagreement with the learned Judge of the industrial tribunal, that the application of the petitioners is liable to be thrown out on the ground that the acts alleged therein do not constitute a contravention of Section 33A of the Industrial Disputes Act.

6. Another point came into prominence in course of argument before this Court. It appears that as a result of the closing down of 301 looms, certain mechanical workers of the opposite party were retrenched and it was at their instance that an industrial dispute was raised and referred by the State Government to the industrial tribunal. The petitioners who are clerical employees did not raise the industrial dispute which was referred to the industrial tribunal. According to the allegations made by the petitioners they were discharged from service by the opposite party on 8 August 1956. Thereupon two applications u/s 33A were filed before the industrial tribunal, one by the petitioners which gave rise to Case No. 149 of 1956 and the other was Case No. 150 of 1956 which was started by one Kshitish Chandra Sarkar and 14 others all of whom were mechanical workers. The mechanical workers who started Case No. 150 of 1956 did not press their application but the petitioners who were applicants in Case No. 149 and who were clerical employees of the opposite party, pressed their claim and it is they who have obtained the present rule. The questions that were referred by the State Government to the industrial tribunal for adjudication in the order of

reference are these:

(1) Whether the management are justified in closing down 301 looms and thereby discharging a large number of workers.

(2) Whether the workmen thus involved are entitled to retrenchment and/or compensation.

7. The question therefore arises whether the petitioners are workmen "concerned in the dispute" within the meaning of Section 33A of the Industrial Disputes Act. Upon the facts alleged it is quite clear that they did not take any part in raising the industrial dispute and it is quite clear that the industrial dispute was raised by the mechanical workers who started Case No. 150 of 1956.

8. Mr. Saha appearing on behalf of the petitioners has contended that the petitioners were also workmen concerned in the dispute because their discharge was consequential to the closing down of 301 looms and the retrenchment of the mechanical workers. We are not, however, prepared to accept this contention as correct. Sections 33 and 33A afford statutory protection against victimization during the pendency of an industrial dispute before a tribunal. In the case of *Automobile Products v. Rukmaji Bala* 1955- I L.L.J, 346 at 353 Das, J., made the following observations:

The object of Section 22 of the 1950 Act like that of Section 33 of the 1917 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimization by the employer on account of their having raised industrial disputes or their continuing the pending proceedings.

9. In the present case it cannot be said that the petitioners were victimized by the employer by retrenchment on account of their having raised an industrial dispute or on account of their continuing the industrial dispute before the industrial tribunal. We are unable to hold, therefore, that the petitioners are persona "concerned in the dispute" within the meaning of Clause A of Section 33 of the Industrial Disputes Act.

10. The same conclusion can also be reached from another point of view. Mr. De appearing on behalf of the opposite party pointed out that the tribunal had made its final award on the dispute which was referred to it for adjudication and that award was published in the Calcutta Gazette, Extraordinary, on 1 April 1957. By that award the tribunal has held that the employer was justified in closing down 301 looms on economic grounds and that it was also justified in discharging the workers. It has also awarded compensation to the retrenched workers u/s 25(i) of the Industrial Disputes Act. Mr. De contended that as a result of this final order in favour of the employer, the application filed by the petitioners u/s 33A has become infructuous. If the petitioners are parties to the industrial dispute, they are bound by the award, with the result that they cannot press the application u/s 33A and this rule has become infructuous after the publication of the award on

1 April 1957. In order to get rid of this difficulty Mr. Saha contended that the petitioners are not parties to the industrial dispute and as such they are not bound by the award. If they are not parties to the industrial dispute, it is difficult to see how they can be persons concerned in the dispute within the meaning of Section 33A. The petitioners cannot have it both ways. They cannot be permitted to say that for the purpose of continuing the application u/s 33A they are concerned in the dispute and for the purpose of avoiding the effect of the final award they are not parties to the industrial dispute. Upon the facts appearing on the record of the case, however, we are inclined to hold that the petitioners are not persons concerned in the dispute within the meaning of Clause (a) of Section 33 and therefore they have no right to maintain an application u/s 33A of the Industrial Disputes Act.

11. For the reasons given above, we are unable to Interfere with the order passed by the second industrial tribunal. This rule must accordingly be discharged.

12. In the circumstances of this case we direct that the parties should bear their respective costs in this Court.

Sri Mitter, J.

13. I agree.