
(1959) 08 BOM CK 0019

In the Bombay High Court

Case No : Reference (IDA) No. 8 of 1959

Bombay Chronicle Company (Private) Ltd.

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 19-08-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 7

Citation : (1960) 1 LLJ 727

Hon'ble Judges : D.M. Vin, J

Bench : Single Bench

Judgement

1. This is a reference made by the Government of Bombay under S. 12(5) of the Industrial Disputes Act for adjudication of the dispute between the Bombay Chronicle Company (Private), Ltd., Bombay (to be referred hereinafter as the company), and the workmen employed under it over the following demands :-

Schedule

"Demand No. 1. - The management should withdraw the notice, dated 15 May, 1958, terminating the services of Sri Solie Petit and the notice, dated 15 October, 1958, terminating the services of Sri K. G. Narayanachar. Sri Petit and Sri Narayanachar be reinstated in their former position from the date of termination of their services. They should be paid the full wages and other allowances which they used to receive normally and all that their rights, under the law in regard to leave, gratuity, provident fund and other matters be restored to them as if they were in service.

Demand No. 2. - The management should assign his legitimate work to Sri K. G. Narayanachar, and give him all the facilities necessary to do the same; and that, further, it should vacate all orders and instructions constituting unreasonable restrictions on him."

2. Usual notices were served on the parties. The secretary of the Bombay Union of Journalists filed a statement of claim on behalf of the workmen and the

managing director filed a written statement on behalf of the company, raising preliminary points concerning validity of the reference and jurisdiction of the Court. These points were heard and decided as preliminary points.

3. The statement of claim narrated in detail the circumstances under which the service of Sarvasri Solie Petit and K. G. Narayanachar (who would be referred to hereinafter as the concerned workmen) were terminated. For the purposes of this award it is not necessary to mention those averments in detail, but it would suffice to note that the allegations were that the attitude of the management of the company was of opposition to the beneficial provisions of and regulations by the Working Journalists Act; that the concerned workmen had, because of their pro-labour activities, incurred some displeasure of the management; and that therefore their services were terminated on false pretexts. It was further alleged that the termination of their services were camouflaged to look innocent, but they were, in fact, acts of dismissal based on certain charges, and that they were also of the nature of vindictive acts of victimization. Hence, the concerned workmen were entitled to be granted the demands made on their behalf.

4. The contentions raised in the written statement were that the services of Sarvasri Solie Petit and Narayanachar were terminated by giving them notices and offering them three months' wages, gratuity and all other dues payable to them. They were neither discharged nor dismissed and hence the demands referred to by the reference were outside the scope and ambit of the items mentioned in the Sch. II of the Industrial Disputes Act. It was further contended that the demands as framed would not relate to industrial disputes within the meaning of the Act. Hence this Court will have no jurisdiction to adjudicate upon the said demands. It was also contended that the concerned workmen were working in the Bombay Chronicle, the publication of which was discontinued from 5 April, 1959 and all the working journalists employed with the company have been paid all their dues under the provisions of the Working Journalists Act. So assuming the demands are granted, they would be incapable of implementation. Hence, the demands do not survive, and hearing of this reference should not be proceeded with.

5. Now, it was urged on behalf of the company that under S. 7 of the Industrial Disputes Act, the labour courts are constituted for adjudication of the industrial disputes relating to any matter specified in the Sch. II and for performing such other functions as may be assigned under the Act. So, the industrial dispute, which can be referred to a labour court, must be relating to a matter covered within the scope of any of the items mentioned under the said schedule. It was then urged that the present dispute would not relate to any matter covered within the scope of any of the items of the said schedule. According to the argument, of course, items 3 of the Sch. II refers to discharge or dismissal of workmen, but reading it as a whole, it would mean that it refers only to wrongful discharge or dismissal. In the present case, the demand as mentioned in the schedule in the reference did not show that the concerned workmen were alleged

to have been wrongfully discharged or dismissed. According to the company, it was also not even alleged in the statement of claim that they were wrongfully discharged or dismissed. The communications informing them of the terminations of their services clearly mentioned that their services were terminated and not that they were either discharged or dismissed. Hence the terminations of the services of the concerned workmen were not such as would be covered within the scope of item 3 of Sch. II. As against this argument, it was urged that validity or otherwise of a reference should be judged from the reference itself and not from the pleadings which came into existence subsequently. The reference in the present case shows that the demands related to the two notices mentioned therein. Of course in those notices the term "termination of service" was used, but the mere use of one or the other term would not be decisive of the exact nature of the action taken against the concerned workmen. Whole of the notices should be read to decide the exact nature. Reading those notices, it was argued that the actions taken against the concerned workmen, were in fact of dismissals and not of simple termination of their services under contract. So, they would be covered within the scope of item 3 of the Sch. II and hence the reference was valid and this Court will have jurisdiction to adjudicate upon the dispute referred to it. Now, validity or otherwise of a reference can be consider mainly from the reference itself and not from the pleadings submitted by the parties subsequent to the reference being made. The demands, over which the present dispute arose, are cited above in Para. 1. They show that the workmen demanded that the management should be directed to withdraw the notice, dated 15 May, 1958, terminating the services of Sri Solie Petit, and the notice, dated 15 October, 1958, terminating the services of Sri K. G. Narayanachar. Clearly, therefore, the nature of the notices will have to be considered. Copies of the notices were produced as G3 and F, respectively, with the statement of claim. Correctness of those copies was not disputed. Both these notices do show that the management described the actions as terminations of service of the concerned workmen, but I do not think that the mere use of a particular term or phrase would be decisive of the exact nature of the action taken against them. In the Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another, , a question arose before the High Court of Bombay as to whether a particular action taken against an employee of the B.E.S.T. Undertaking was a simple action of termination of service or a dismissal or a discharge from service under the standing orders. While considering the contentions raised therein, the following observations were made :-

"It is true that the form of the order terminating employment is not always decisive of the true nature of the order. If an order in form terminating employment is passed merely to camouflage an order dismissing or discharging from employment, the labour court may be entitled to come to the conclusion, having regard to the circumstances in which the order was passed, that the requisite formalities not having been followed the order was unlawful and cannot

be given effect to."

Of course, in the ruling after considering the evidence and the circumstances, the Court came to the conclusion that the action taken against the employee concerned was only a simple termination of service; but it was clearly held that it would be open to a labour court to consider the true nature of the actions taken and not to be bound by the mere use of a particular term or phrase in the order. In another ruling, viz., in *Kamalakar Shankar Kate Vs. Principal, Training College for Men, Sangamner*, relevant remarks at p. 696, it was observed as follows :

"It is true that the particular language employed in an order is not conclusive, but in such a case it is necessary to examine the language of the order and to find out whether the order of discharge is really one of dismissal, and as far as I have been able to read and re-read the notice of discharge, I am not satisfied that the order of discharge was one intended to be an order of dismissal because if that was the idea at the back of the mind of the authorities, they would have given the petitioner the opportunity of showing cause against the action which they proposed to take against him."

This ruling also lay down the same principle as was in the ruling cited above. It is, therefore, open to this Court to consider the true nature of the actions taken against the concerned workmen. The notice, dated 15 October, 1958, passed against Sri Narayanachar, mentioned that he had done or attempted to do various acts with a view to harm and injure the reputation and business of the company. As for his duties as a working journalist, it was alleged that in view of his hostility towards the editor and towards the management it was impossible to entrust him with any work without endangering the safety of the company; that the editor since a long time past was not assigning any work to him; that the editor had lost confidence in him; and that, in fact, he was not doing any work for some months past. As far as Sri Solie Petit is concerned, the allegations made in the notice, dated 15 May, 1958, were that the editor had forwarded to the managing director the notes passed by him on more than one occasions to Sri Solie Petit saying that serious mistakes appeared in the cinema page due to his sheer carelessness, but no heed was paid. Then, in the issues of the *Bombay Chronicle* and the *Bombay Sentinel* of 9 May, 1958 there were mistakes again. Sri Solie Petit tendered his explanation to the manager but it was not found to be satisfactory and acceptable. So, in the interest of the newspapers it was decided to take him off from the cinema page as his inefficiency and indifference could not be tolerated any further; and as there was no other work that could be offered to him in the editorial department, there was no other alternative but to terminate his services. Both the notices clearly show that the allegations made against the concerned workmen, were regarding their work, ability and capacity. As for as Sri Narayanachar was concerned, an allegation was made that his attitude was hostile and he had done acts with a view to injure the reputation and business of the company, and hence he was an unreliable person to be kept in service. The allegations against Sri Solie Petit were that he was careless,

habitually negligent, inefficient and indifferent. Evidently, it was because of these reasons that their services were terminated. The question is whether such a termination of services is a simple termination of services under contractual rights, or is an action of discharge or dismissal for misconduct, misbehavior or blameworthy manner. A question similar to the one in the present case arose in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, wherein it was held by the Supreme Court as follows :

"There can be no doubt that removal - I am using the term synonymously with dismissal - generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is founded and justified on some ground personal to the officer. Such grounds personal to the officer. Such grounds, therefore, involve the leveling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer. There is no such element of charge or imputation in the case of compulsory retirement."

So, in a dismissal of discharge, as distinguished from simple termination of service under contractual rights, there would be imputation or charge against the worker concerned regarding his work or ability or capacity or manner or behavior, etc. In *Provincial Transport Services v. Assistant Labour Commissioner and other, Nagpur 1958 I L.L.J. 758*, following the above ruling, it was observed by the High Court of Bombay as follows :

"It has been pointed out by the Supreme Court in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, that where an imputation or charge is not in terms made a condition for the exercise of powers of compulsory retirement, the action taken cannot be regarded punitive."

In *Bhagwan Dass v. Senior Superintendent, Way and Works, Eastern Railway, Dinapore and others 1958 I L.L.J. 324* the High Court of Patna approvingly cited the following observations of the Calcutta High Court :-

"The real object of differentiating between the punishment and the mere removal according to terms of service lies in the effect of the order. In the case of punishment the employee's reputation is lost and in the case of dismissal there is a bar to obtaining fresh service under the Government. If the service of an employee is simply terminated in accordance with his term of service, there is neither any infamy nor a bar to reemployment."

As considered above, the notices terminating the services of the concerned workmen show that serious imputations were made against them. They were such as would come in their way of getting fresh employment either with the same employer or with an other employer. They relate not only to their ability, efficiency and zeal to work, but also to their qualities as employees. It is true that the concerned workmen were offered their dues, which would have accrued

to them, if the actions taken against them were, in fact, of simple termination of services; but that would not matter much because the actions seem to have been founded and justified on the imputations made against them. Hence, following the rulings cited above, I think that the actions under consideration cannot be held to be of simple terminations of services. The notices do show that punitive actions were taken against the concerned workmen. Such actions would clearly be covered within the scope of item 3 of Sch. II.

6. For arriving at the above conclusion, the averments made in the statement of claim were not taken into account. But assuming that they should be considered, it appears from the averments made in Paras. 15 to 18 that the actions of termination of services were alleged to be camouflages for the acts of dismissal based on unsubstantiated charges and were also alleged to have been taken with vindictiveness and with a view to victimization. So, even the allegations in the statement of claim would show that what was contended was that the actions were in reality wrongful discharges or dismissals. Hence the dispute referred to for adjudication would be one relating to a matter specified in item 3 of the Sch. II. Hence the reference must be held to be valid.

7. It was then urged that the demands were very strangely worded and were such as could not be said to be concerning industrial disputes. It was further urged that the demand to require the management to withdraw the notices terminating the services was a strange one because a notice for termination of services cannot be directed to be withdrawn. However, reading the demands, it seems to me that they clearly relate to the dispute connected that the employment and/or non-employment of the concerned workmen. Such a dispute would amount to an industrial dispute within the meaning of the term, as defined under S. (k). Of course instead of only stating the demand of reinstatement, its usual essentials are also mentioned; but that is not uncommon. At the most that would have been redundant, but that would not mean that the demands did not relate to an industrial dispute. So even on this ground the reference cannot be held to be bad or illegal.

8. It was then urged that the reference would not survive because the publication of the Bombay Chronicle was discontinued from 5 April, 1959, and all the workmen employed with the company are discharged and so it would not be possible to grant the demands made by the workmen. Relying on the decision of the Supreme Court in *Surinder Kumar and other v. Gian Chand and other* 1958 S.C.J. 159 it was argued that the circumstances, arising at the time of the decision, should be considered by a Court before considering whether a relief should be granted or not and so this Court would be bound to take into account the discontinuance of the publication of the Bombay Chronicle. It was further argued that it would not be within the jurisdiction of this Court to direct the reopening or restarting of the business. Moreover, when the demand for reinstatement has been made, it would not be open to the Court to grant any other demand. In support of this proposition reliance was placed on the decisions

in

(1) Sri Sudhir Chandra Kohay and others v. H. Mukherjee and Banerjee Surgical, Ltd., 1956 L.A.C. 471;

(2) Harendra Nath Bose and Others Vs. Judge, 2nd Industrial Tribunal and Others, ; and

(3) Hukumchand Jute Mills Ltd. and Another Vs. Labour Appellate Tribunal and Others, .

It was then argued that the subsequent circumstances arising in the present case would show that the demands made by the workmen cannot be granted and so the reference cannot be proceeded with. Now, the company's contentions in this behalf obviously refer to the question whether the demand should be granted or not and not to the questions concerning validity or otherwise of the reference. It is true that due to the discontinuation of publication of the Bombay Chronicle, it would not be possible to grant the relief of reinstatement; but in the demand 1, reinstatement in the former position from the dates of termination of services was claimed. That would mean that, in case the concerned workmen are entitled to reinstatement, but the same cannot be granted to them, it will have to be considered as to whether they can and should be, under the alleged circumstances, granted any other relief in lieu of reinstatement or not. In none of the rulings, relied upon on behalf of the company, circumstances similar to the ones arising in the present case were considered. Moreover, consideration of this point would necessitate consideration of the questions of fact which may be raised in this case. So, it would not be proper to decide at this stage whether any relief in lieu of reinstatement can be granted in the present case or not, further, as observed above, the grounds on which the services of the concerned workmen are terminated, are of very serious nature. If not cleared out, they are likely to prejudice them in their future prospects. In these proceedings the question whether there were materials to prove those grounds or not would be a very relevant question. Hence even if the demand for reinstatement cannot be granted, it cannot be held that proceeding further with hearing of this reference would be absolutely futile. But, whatever may be its exact utility, suffice it to hold for the purposes of this award that the subsequent discontinuation of publication of the Bombay Chronicle would not invalidate this reference and oust the jurisdiction of this Court.

9. Considering the contentions of the parties as above, I hold that the reference made to this Court is quite valid and hearing of this case should proceed further. The company has not filed its written statement on other points. Hence, it is directed that it should file its written statement, if it is so desired, within three weeks from the date of publication of this award. The date for hearing would be notified hereafter.

10. It is directed that this award - part I, be submitted to the Government. There would be no orders as to costs.