
(1966) 05 PAT CK 0006

In the Patna High Court

Case No : Misc. Judicial Case No. 1730 of 1964 and Civil Writ Jurisdiction Case No. 694 of 1965

Cane Manager, New India Sugar Mills Ltd.

APPELLANT

Vs

Krishna Ballabh Jha and Others

RESPONDENT

Date of Decision : 12-05-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(3), 33

Citation : AIR 1967 Patna 10 : (1967) 2 LLJ 210

Hon'ble Judges : R.L. Narasimham, C.J;A. Ahmad, J

Bench : Division Bench

Advocate : T.K. Prasad and Ramji Sharan, for the Appellant; Banen Roy and J. Krishna and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—These two applications deal with a common question of law and are hence disposed of in one judgment.

2. The petitioner is the New India Sugar Mills. Limited, which runs a sugar factory in the district of Darbhanga. Respondent No. 1 in M. J. C. 1730 of 1964 was a worker in the said Sugar Mills having been employed as a switch board attendant. Proceedings were drawn up against him for having been found asleep while on duty at 8.30 P.M. on the 8th March 1964, and after some sort of domestic enquiry he was dismissed from service with effect from 28-3-1964. Respondent No. 1 (Krishna Ballabh Jha) in C. W. J. No. 694 of 1965 was another worker of the same Sugar Mills who was performing the duties of weighment clerk. Against him also proceedings were drawn up for gross negligence of duty and dishonesty and after some sort of domestic enquiry, he was dismissed from service by the order of the employer, dated 18-2-1964. The employer did not apply to the Presiding Officer, Industrial Tribunal, Dhanbad, for approval of their action in dismissing the two workmen as required by the proviso to Sub-section (2) of Section 33 of the Industrial Disputes Act (hereinafter referred to as the

Act). It is, however, admitted that on the dates on which the aforesaid two workmen were dismissed, a reference u/s 10(1) of the Act was pending before the Tribunal (Reference case 7 of 1963) where the action of the same employer in dismissing and terminating the services of two of their workmen, namely, Lal Bahadur watchman and Mohiuddin weighbridge fitter, was pending adjudication. The Tribunal gave its award in that reference on 2-11-1964.

3. The workmen in the present two cases filed applications u/s 33A of the Act before the said Tribunal. The petitioner employer raised a preliminary objection on the maintainability of such an application u/s 33A on the sole ground that the two workmen, namely, Krishnadeo Thakur and Krishna Ballabh Jha, "were not concerned in the previous dispute". The Tribunal decides this preliminary issue in favour of the workmen and these two applications under Articles 266 and 227 of the Constitution have been made challenging the correctness of the view taken by the learned Tribunal.

4. Thus, the sole question for consideration is whether the aforesaid two workmen may be said to have been "concerned in the dispute" in Reference Case 7 of 1963, which was then pending adjudication before the said Tribunal. As already pointed out, two of the workers in that dispute, namely, Lal Bahadur and Mohiuddin, were engaged as watchman and weighbridge fitter respectively before their removal from service. There was a third worker, namely, Misri Gope, who was engaged as Donga mazdoor, but it is unnecessary to refer to his case in this judgment. It was urged by Mr. Prasad on behalf of the management that there was nothing in common between the work of the watchman and weighbridge fitter on the one hand and the work of weigh-ment clerk (Krishna Ballabh Jha) and switch board attendant (Krishnadeo Thakur) on the other and that consequently these two workmen could not be held to have been "concerned in the previous dispute". It is, however, not denied that the cause of these two workmen also was taken up by the same Union, namely, New India Sugar Mills Workers' Union, which had taken up the cause of Lal Bahadur and Mohiuddin in Reference Case 7 of 1963. Mr. Prasad, however, urged that merely because all these workers are members of the same Union and that Union had sponsored their cause, it would not be correct to hold that they were also "concerned in the previous dispute" unless the nature of the dispute in the two cases indicates some common features which affect all the workmen.

5. The law on the subject has been laid down by three important decisions of their Lordships of the Supreme Court which, I think, are sufficient for the disposal of these two cases. The earliest is *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, where their Lordships gave a very liberal construction to the words "workman concerned in such dispute" occurring in Section 38 (1) and (2) of the Industrial Disputes Act and held that the words could not be restricted to persons who were actually parties to the dispute. To quote their Lordships:

"Therefore, we are 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. In our opinion, that 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."

This decision, however, does not clearly indicate as to whether there should be any common feature in the nature of the dispute in the two classes of cases. On the other hand, the facts of that case show that the workman concerned was Works Manager, whereas the pending reference was in respect of the dispute between the employer and some appendices. There is no observation in the judgment to show what was the nature of the dispute in the was cases. But in a later decision in the well known Digwadih Colliery case, (1964) 2 LLJ 248 SC (sic), Lordship; Jointed out:

"Unless it is known as to what was the nature of the dispute pending in the mid reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the meaning of Section 33(2)."

This judgment may support the view of Mr. Prasad that apart from the fact that the two disputes were sponsored by the same Union and the award may be binding on all the workmen, nevertheless to apply the liberal interpretation of the words "workmen concerned in the dispute" the nature of the two disputes should also be carefully scrutinised.

In a later judgment of the Supreme Court in The Tata Iron and Steel Co. Ltd. Vs. D.R. Singh, their Lordships pointed out that the law on the subject has been laid down both in the New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, and Digwadih Colliery case 1964 2 L LJ 143 (SC). I am, therefore, inclined to accept the contention of Mr. Prasad that there must be some common feature in the nature of the disputes in the two cases, which should serve as a connecting link thereby rendering the workmen in the later case also workmen concerned in the dispute in the earlier case. The mere fact that the same Union had taken up the cause of the two workmen or else that by virtue of Section 18(3)(d) 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 in the two disputes as mentioned above

6. There is a decision of the Patna High Court in Khagesh Sarkar and Others Vs. Tatanagar Foundry Co. Ltd. and Others, , which supports the aforesaid conclusion. I am quoting the following passage at page 423:

"The question whether a workman is concerned in the dispute under adjudication is a mixed question of law and fact, and it is not possible to lay down any specific and particular test or rule of law or formula for determining whether a particular workman is a workman concerned in the dispute within the meaning of Section 33 of the Act or not. The question in each case will have to be determined in view of the particular facts of that case. The principles applicable to come to a decision in this regard, however, are, in my opinion, to find out the nature of the dispute under adjudication, the effect of its decision on the rest of the workmen

and the nature of representation of the workmen in the dispute. The facts of each case considered in the light of findings on the above points will determine the question at issue whether in a particular dispute a particular workman was a workman concerned or not within the meaning of the above section."

7. Mr. Ranen Roy for the workmen, however, urged that the observation in the earlier judgment of the Supreme Court in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, should be given full effect and that even if there was nothing in common between the two disputes, the workman in the later dispute should be held to have been concerned in the earlier dispute also, if the earlier dispute had been taken up on behalf of all the workmen and they would be bound by the award. In my opinion, this extreme contention cannot succeed in view of the later pronouncements of the Supreme Court mentioned above. Mr. Roy also quite fairly cited before us another decision of the Supreme Court in *Upper Ganges Valley Electricity Supply Co. Ltd. Moradabad v. G.S. Srivastava*, (1963) 1 LLJ 237 (SC), where on a construction of Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 their Lordships held that an application u/s 23 or that Act was not maintainable because the workman was not concerned in the only pending appeal before the Labour Appellate Tribunal which related to an individual dispute. This case may be distinguished on the ground that it referred to the specific provisions of Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950, which may differ to some extent from Section 33 of the Industrial Disputes Act. But it does support the view pressed by Mr. Prasad for the employer and also indicated in the *Digwadih Colliery case*, 19642 L LJ 143 (SC) by the Supreme Court itself. There are clear observations to the effect that where the pending previous reference was an individual dispute in respect of one employee, it could not be said that all workmen were concerned in that dispute.

8. But this conclusion does not very much help the petitioner employer in these two cases. There is one very important common feature in all these disputes which serves as a connecting link. In all of them the workers concerned had challenged the order of dismissal or termination of service passed by the employer on the ground that they were victimised because of their trade union activities. It was further specifically alleged that there were two Unions in the said factory, namely, the *New India Sugar Mills Workers' Union*, which had sponsored the cause of these petitioners, and a rival Union sponsored by the employers themselves. It was also stated that the refusal of the workmen concerned to join the rival Union was the main ground for which they were victimised (see paragraphs 16, 17 and 18 of Annexure II in *C. W. J-C 694 of 1965* and paragraphs 16, 17, 18 and 19 of Annexure II in *M. J. C. 1780 of 1964*). The same allegations were made by *Lal Bahadur and Mohiuddin* in Reference No. 7 of 1963. (Against that award in that reference an application under Article 226 of the Constitution was filed contending that this very important point in controversy between the parties was not decided by the Presiding Officer and that consequently his award was invalid and this Court in *M. J. C. No. 1729 of 1964* disposed of on 5th May, 1966 set aside the award and directed the Presiding

Officer, Industrial Tribunal, to decide this question).

9. It is thus abundantly clear that in all these disputes the workmen have alleged that they were victimised mainly because they were not prepared to join the rival Union sponsored by the management. There is thus an important common point between all these disputes and if in the earlier reference it is held by the Tribunal either that the rival Union was not sponsored by the management, or that the management was not trying unfair means to persuade the workmen to give up the New India Sugar Mills Workers' Union and to join the rival Union, that decision will vitally affect the present dispute also where the same question arises for consideration. Hence, apart from other factors referred to in the New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, , which are admittedly found here, there is also another very important connecting link which serves as a nexus between these cases and is sufficient to show that these two workmen were concerned in the earlier dispute. It is true that this aspect of the matter was not considered by the Tribunal, but as the facts for the purpose of arriving at this conclusion are admitted, this Court can maintain the order of the Tribunal, though on grounds slightly different from those given by the Tribunal.

10. For these reasons, the two applications are dismissed with costs. The petitioner shall pay Rs. 100/- to respondent Krishnadeo Thakur in M. J. C. No. 1730 of 1964 and another sum of Rs. 100/- to respondent Krishna Ballabh Jha in C. W. J. C. 694 of 1965.

Anwar Ahmad, J.

11. I agree.