

(1959) 02 KL CK 0022
In the High Court Of Kerala

Chittadi Estate

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 13-02-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1959) 2 LLJ 184

Hon'ble Judges : P.T. Raman Nair, J;M.S. Menon, J

Bench : Division Bench

Judgement

M.S. Menon, J.—The petitioner, the superintendent of the Chittadi Estate, Mundakkayam, challenges the validity of the award of the Industrial Tribunal, Alleppey, in Industrial Dispute No. 90 of 1956. The question referred for adjudication was:

Whether P.J. Abraham, office assistant, Chittadi Estate, Mundakkayam, is entitled to the full emoluments and amenities of a staff member and, if so, from what date.

2. The petitioner contended before the tribunal that the dispute referred was not an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947, and that the tribunal had hence no jurisdiction to deal with it. The contention was not accepted.

3. The tribunal said:

I hold that this is not an individual dispute but that it is an industrial dispute as denned in Section 2(k) of the Industrial Disputes Act and that I have jurisdiction to adjudicate it.

4. It is settled law that though an order of reference is essentially administrative in character that fact does not preclude a party from showing that what was referred was not an industrial dispute and that consequently the tribunal had no jurisdiction to deal with the reference. As stated by the Supreme Court in 1957

XI L.L.J.1 :

In spite of that the making of a reference by the Government under the Industrial Disputes Act is by the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an " industrial dispute" at all and therefore the jurisdiction of the industrial tribunal to make the award can be questioned even though the factual existence of a dispute may not be subject to a party's challenge.

5. The question as to whether an " individual dispute," a dispute between a workman and his employer, can be considered an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947, was the subject of acute controversy. In 1957 I L.L.J. 27 Venkatarama Ayyar, J., said:

The question whether a dispute by an individual workman would be an industrial dispute as denned in Section 2(k) of the Act 14 of 1947, has evoked considerable conflict of opinion both in the High Court and in industrial tribunals, and three different views have been expressed thereon.;

stated the three views as follows:

(i) A dispute which concerns only the rights of individual workers, cannot be held to be an industrial dispute.

(ii) A dispute between an employer and a single employee can be an industrial dispute as defined in Section 2(k).

(iii) A dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the union or a number of workmen.;

and observed:

The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the. scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workmen was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen.

6. The case before the Supreme Court, however, was not one under the Industrial Disputes Act XIV of 1947 and so the judgment went on to say:

We are directly concerned in this appeal not with the Industrial Disputes Act, 14 of 1947, but with the Central Provinces and Berar Industrial Disputes Settlement Act, 23 of 1947, and in the view which we take of the rights of the respondent under that statute, there is no need to express a final opinion on the question

whether a dispute simpliciter between an employer and a workman would be an industrial dispute within Section 2(k) of Act 14 of 1947.

7. In *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, the question again came up for consideration. Kapur J., dealt with the cases adopting the third view and said [at p. 8]:

The view taken in these cases is in accord with the interpretation we have put on the expression " industrial dispute" as denned in the Uttar Pradesh Act or the Central Act. Taking into consideration the whole tenor of the Act and the decisions of this Court, the decided cases to the extent that they take a contrary view, i.e., an individual dispute is comprised in an " industrial dispute," must, unless there is something peculiar as to facts, be held to have been wrongly decided.

8. The dispute referred for adjudication in this case is primarily a dispute which affects only an individual workman and Ms employer, i.e., the respondent 3 (P.J. Abraham), and the petitioner. Such a dispute can become an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947, only if it is raised not merely by the workman concerned but by his colleagues as well.

9. According to counsel for the tribunal the colleagues sponsoring the dispute need not necessarily be the workmen of the same establishment; it is enough if they are engaged in the same industry. We consider it unnecessary to decide this question as the order of reference makes it quite clear that the dispute referred was a dispute between the petitioner and the workmen of his estate. That order (omitting the annexure thereto which embodies the issue extracted in Para. 1 above) reads as follows:

Whereas the Government are of opinion that an industrial dispute exists between the superintendent, Chittadi Estate, Mundakkayam, and the workmen of the above estate represented by the regional secretary, the Estate Staffs" Union of South India, Thayyil Buildings, Chetty Street, Kottayam, in respect of matters mentioned in the annexure to this order;

And, whereas, in the opinion of Government it is necessary to refer the said industrial dispute for adjudication ;

Now therefore, in exercise of the powers conferred by Section 10(1)(c) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947, the Government hereby direct that the said industrial dispute be referred for adjudication to the Industrial Tribunal, Alleppey.

10. It is common ground that the workmen of the Chittadi Estate did not espouse the cause of the respondent 3. It must follow that the dispute concerned is not an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947, that the tribunal had no jurisdiction to deal with it and that the award passed is unsustainable and has to be quashed. Order accordingly, No costs.

11. Counsel for the petitioner submitted that the regional secretary of the Estate Staffs' Union of South India had no right to represent the workmen of the Chittadi Estate as admittedly no workmen of that estate except estate respondent 3 was for is) a member of that organization. In view of the conclusion we have reached, it is unnecessary to deal with this question as well and it is not considered in this judgment.