
(1957) 07 CAL CK 0038
In the Calcutta High Court
Case No : Civil Revision No. 3481 of 1946

Chunilal Gobardhandas Seth	Vs	APPELLANT
M. Mansukhlal and Company (Private) Ltd.		RESPONDENT

Date of Decision : 31-07-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1958) 2 ILR (Cal) 542

Hon'ble Judges : Sarkar, J;P.N. Mookerjee, J

Bench : Division Bench

Advocate : Bejoy Bhose, for the Appellant;Amiya Kumar Mookerji, for the Respondent

Final Decision : Dismissed

Judgement

1. This Rule is directed against an award, passed by the Sixth Industrial Tribunal, West Bengal, in the matter of an industrial dispute between Messrs. M. Mansukhlal and Company and one of their workmen, namely, Shri Chunilal Gobardhandas Seth, Chunilal was the cashier-cum-accountant of Mansukhlal and Company and his service was terminated with effect from January 31, 1955, by a notice, dated January 8, 1955, in which it was stated that step was being taken on account of business depreciations. Thereupon, the workman Chunilal applied to the Labour Commissioner, Government of West Bengal, for relief, on January 11, 1955, through a Trade Union named Paschim Banga Gomosta Sabha but, subsequently, he withdrew the authority he had given to the said Union to represent his case and conducted his case personally before the Labour Commissioner. Thereafter, on April 9, 1956, the dispute was referred for adjudication to the aforesaid Tribunal by an order of the Government of West Bengal, passed u/s 10 of the Industrial Disputes Act, 1947 (XIV of 1947). In the said order the workman Chunilal Gobardhandas Seth was described as represented by Khimjee Hunsraj Employees" Union and the point for adjudication was described as follows: "Is the termination of service of Shri" "Chunilal

Gobardhandas Seth justified? To what relief is he "entitled?"

2. Before the Tribunal the above mentioned Union appeared and filed a written statement on behalf of the workman, alleging that his services had been terminated without assigning any reason and that such termination without assigning any reason and that such termination involved unfair labour practice and claiming that he should be reinstated together with all the wages which he would have earned during the period of his forced unemployment. M. Mansukhlal and Company which will hereafter be described or referred to as the Company, filed a statement, resisting the workman's claim on the grounds inter alia that the employment of the workman had been terminated for the sake of economy and trade reasons as the Company was incurring losses in business and that he was not entitled to any compensation because he had ceased to attend office from the date on which he received notice of termination of employment. In a supplementary written statement the Company raised a preliminary legal objection to the effect that the dispute was not an industrial dispute u/s 2(k) of the Industrial Disputes Act, 1947, and that, as such, the Tribunal was not competent to make any adjudication.

3. The Tribunal upheld the preliminary objection and, without entering into the merits of the case, passed an award to the effect that it had no jurisdiction to entertain the reference made by the Government, because the dispute was not an industrial dispute within the meaning of the Industrial Disputes Act, 1947. The Tribunal came to this finding mainly on two grounds, namely, (1) that it was the dispute of an individual workman, and (2) that there was no pre-existing dispute at the time the workman's employment was terminated. The award, made by the Tribunal was accepted by the Government and published in the "Calcutta Gazette" of October 18, 1956, u/s 17 of the Industrial Disputes Act.

4. The present petition has been filed by the workman Chunilal Gobardhandas Seth as also by Khimjee Hunsral Employees' Union under Article 227 of the Constitution and it has been urged on their behalf (i) that the Tribunal erred in law in holding that the dispute was not an industrial dispute, as defined in the Industrial Disputes Act, 1947, and further (ii) that the Tribunal should not have considered the question whether there was any pre-existing dispute at the time the workman's service was terminated, nor allowed the question to be raised in the absence of an issue on the point or any previous notice thereof. The Petitioners have also challenged the Tribunal's competency to refuse to entertain a reference made by the Government, and the opposite parties locus standi to question the validity or propriety of the same.

5. As regards the first point, the Tribunal relied upon the fact, admitted by the workman in his evidence, that he was not a member of the Khimjee Hunsraj Employees' Union by which he was represented at the reference of the dispute to the Tribunal and held, on the authority of the judgment of the Supreme Court in the case of D.N. Banerji Vs. P.R. Mukherjee and Others, that the dispute in the present case could not be deemed to be an industrial dispute because the other

employees of the concern had not come forward to the cause of the workman and he was not a member of the Trade Union which represented him.

6. "Industrial Dispute" as defined in Section 2(k) of the Industrial Disputes Act,

Means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with conditions of labour of any person.

7. In construing the above definition in the case cited, Chandra Sekhar Aiyar, J., who delivered the judgment of the Supreme Court observed as follows:

The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest-such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purposes of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute when, as often happens, it is taken up by the Trade Union of which he is a member and there is a concerted demand by the employees for redress.

8. It was argued by Mr. Bhose on behalf of the Petitioners that the Supreme Court did not by the above observations, intend to lay down that dispute of an individual workman, arising out of his dismissal, could develop into an industrial dispute, only if it was taken up by a Trade Union, of which he happened to be a member, and the membership of the Union which might take up the cause of the individual workman was not a *sin qua non*, as a Union was entitled to take up the cause of a non-member also, and he referred us to the observations of the Supreme Court in the later case of *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, .

9. In the case, last cited, Venkatarama Ayyar J., in construing the provisions of C.P. and Berar Industrial Disputes Settlement Act (23 of 1947), considered the position under the Industrial Disputes Act (XIV of 1947) and pointed out that there had been considerable divergence of opinion both in the High Courts and in Industrial Tribunal on the question whether a dispute by an individual workman would be "an industrial dispute within the meaning of the said Act. He summarised the decisions under three heads, namely, (1) "a dispute which concerns only the "rights of individual workers cannot be held to be an industrial "dispute, (2) a dispute between an employer and a single "employee can be an

industrial dispute, and (3) 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 pointed out that the preponderance of judicial opinion was in favour of the third view. He also expressed himself in favour of this view and observed inter alia as follows.

There is considerable reason behind it. Notwithstanding that the language of Section 2(h) 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 right of workmen as a class and that a dispute touching the individual rights of a workman 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.

10. but he did not express any final opinion in the matter as it was not necessary to do so for the purposes of the case before him which was strictly one under the C.P. and Berar Industrial Disputes Settlement Act (No. 23 of 1947) where "industrial "dispute" had a wider meaning.

11. Mr. Bhose did not, as, indeed, he could not, in view of the Supreme Court decision *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, to which we shall presently refer, take up the extreme proposition that an individual dispute was, in all circumstance, an industrial dispute under the Industrial Disputes Act, but he pointed out that Venkatarama Ayyar, J., did not lay it down in the *Central Provinces Transport Service v. Raynunath Gopal Patwardhan* (supra) case that, in order that a dispute, touching the individual rights of a single workman might be converted into an industrial dispute, it was necessary that the dispute should be taken up by a Union, of which the said workman happened to be a member. He accordingly, contended that the observations in the case of *D.N. Banerjee v. P.R. Mookerjee* (supra), which of course, was not cited in *Central Provinces Transport Service v. Raghunaih Gopal Patwardhan* (supra) should not be constituted literally or too strictly and that all that was necessary to convert an individual dispute into an industrial dispute was that the dispute should be taken up by anion or by a number of workmen, as observed in the later decision.

12. It is possible that the decision in *D.N. Banerjee v. P.R. Mookerjee* (supra) was not referred to in the later decision because the question, there decided, did not directly arise or arise for decision in the other case, as was explained in a still later decision of the Supreme Court, to which reference will presently be made. So far as our Court is concerned, of the three views summarised in the decision of the Supreme Court in *Central Provinces Transport Service v. Raghunath Gopal Patwardhan* (supra) the third view has always been preferred and it has been uniformly held that a dispute between a single workman and his employer is not an industrial dispute, unless the rest of the workmen or the majority of them or the workmen's Union take up his cause It appears to have been so held by Mitter, J., in the matter of *J. Chaudhuri v. M.C. Banerjee* (1951) 55 C.W.N. 256.

and that decision was accepted as correct by Bose, J., in *Bilash Chandra Mitra Vs. Balmer Lawrie and Co. Ltd.*, .

13. The reason why a dispute between a single workman and his employer cannot per se be an industrial dispute within the meaning of the Industrial Disputes Act is that, the scheme and object of the Industrial Disputes Act being the preservation of peace and harmony in industry, the machinery, created by the Act, cannot be availed of unless such peace or harmony is disturbed by any act of the employer or by any dispute, arising in any industry. A single workman may have his grievance against the employer or may claim rights which do not concern other workmen and the latter may not support, or may be apathetic or even antagonistic to, his demands and, in such a case, the peace of the industry is not likely to be disturbed by the dispute raised by the individual workman. In the case of *Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another*, . Sinha, J. held that, where an individual workman is dismissed and his dismissal is not objected to by any union of workmen or by a majority of his fellow workmen, that is not an industrial dispute. In that case the fellow workmen of the dismissed workman not only did not take up his cause but bitterly complained about his conduct and wanted him to be removed.

14. It is thus clear that it is only when the other workmen of the industry or a majority or a number of them take up the cause of the individual workman and make a concerted demand for redress that the individual dispute developed into a general dispute between the employer and the workman and threatens to disturb the peace of the industry, and it is only such a dispute that can be adjudicated upon under the provisions of the Industrial Disputes Act of 1947. The dispute may arise in an industry in which there is a Union, of which the individual workman is a member, and the union may take up his cause, or it may arise in an industry, in which no Union of workmen has yet been formed. In the latter case, it cannot be laid down as a sine qua non for conversion of the individual dispute into an industrial dispute that it should be taken up by a Union, as it may well develop into an industrial dispute, if only the other workmen of the industry of a majority or a number of them take up the cause of the individual workman and make a concerted demand for redress, thereby threatening industrial peace. Even where there is a union of the workmen of the industry, all the workmen may not be members thereof and if, in such a case, the cause of an individual workman who is not a member of the Union is taken up by the Union as representing in general the workmen of the industry, we do not think that it can be said that it will not be an industrial dispute within the meaning of the Industrial Disputes Act, simply because the workman in question is not a member of the Union. The view of the Tribunal that the Supreme Court ruled to the contrary in the case of *D.N. Banerjee v. P.R. Mookerjee and Ors.* (supra) is not correct. The observations in the above case, on which the Tribunal has relied are, in our opinion, only illustrative and not exhaustive of the circumstances, under which an individual dispute may develop into an industrial dispute. Similarly, the observations in the later case, reported in *Central Provinces*

Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, are also illustrative and not exhaustive. There is thus no real conflict between the observations in the two cases.

15. After this matter had been heard and when we were considering our judgment, the decision of the Supreme Court in the case of Newspapers Limited v. State Industrial Tribunal U. P. AIR (1957) S.C. 632. was brought to our notice and the matter was further heard in the light of that decision. That decision has since been reported. This case arose under the U. P. Industrial Disputes Act (28 of 1947), but definition of "industrial dispute" in the said Act was in the same terms as the definition in Section 2(k) of the Industrial Disputes Act, 1947 (Act XIV of 1947). In the U.P. case a Lino typist, named Tajammal Hussain employed by the Newspapers Limited, Allahabad, was dismissed on allegations of incompetence. The other workmen in the employ of the said Company made no grievance of it and did not espouse his cause. But his cause was taken up by the U.P. Working Journalists Union, Lucknow, with which however, the dismissed workman had no connection whatsoever. The dispute was ultimately referred by the U.P. Government to the Industrial Tribunal at Allahabad which ordered his reinstatement. An appeal by the employer Company to the Labour Appellate Tribunal was unsuccessful. The Appellant Company then moved the Allahabad High Court under Article 226 of the Constitution and, this having dismissed, there was in appeal to the Supreme Court. This appeal was allowed and Kapur, J., who delivered the judgment of the court, referred to the various decisions of the Supreme Court in Central Provinces Transport Service v. Raghu Nath Gopal Patwardhan (supra) and D.N. Banerjee v. P.R. Mookerjee (supra) and made the following observations, regarding the meaning of the expression "Industrial dispute", as explained in the latter decision;

This view is in consonance with the basic idea underlying modern industrial legislation. The interpretation given to the corresponding phrase "trade dispute" in English law and "industrial dispute" in Australian law also accords with this view and, in the absence of an express provision to the contrary or necessary intendment there is no reason to give a different interpretation to the expression in the Indian Statute.

16. He then referred to certain English and Australian decisions and also to the Indian decisions, bearing upon the question, including the two decisions of this Court, already referred to, and observed:

The view, taken in these cases, is in accord with the interpretation we have put in the expression "industrial disputes" as defined in the U.P. 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.

17. In view of this latest pronouncement of the Supreme Court on the point, it

must be taken as settled that an individual dispute cannot be considered to be an industrial dispute within the meaning of the Industrial Disputes Act of 1947, unless it has developed into an industrial dispute on being taken up by the other workmen of the industry or by a majority or a number of them or by a Union of the workmen where there is one.

18. The facts, found in the present case, leave no room for doubt that the dispute here is the dispute of a single workman, arising out of his dismissal, which has not developed into an industrial dispute. The workman who is the Petitioner No. 1 before us deposed before the Tribunal. He has not stated, and there is also nothing to show, that the other workmen of this particular concern came forward to support his cause or made any grievance of his dismissal. It appears from the petition, filed before us, that this particular concern employed about ten workmen but there was no Union of such workmen. Khimjee Hunsraj Employees' Union, by which the Petitioner No. 1 was represented before the Tribunal, is not a Union of the workmen of this particular industry. The Petitioner has stated in para. 6 of the petition of Rule although there was no such case before the Tribunal, that the said Union is a Union of the employees of a sister concern, carrying on the same of a similar business as this particular concern. That, however, has been denied in the counter affidavit, filed on behalf of the opposite party, and we are inclined to accept that denial. But, even otherwise, this Rule cannot succeed. The Union which is to take up the cause of the aggrieved workman to make his dispute an industrial dispute must be a Union of workmen of that particular industry of concern, in which he is employed. A Union of workmen of a sister industry will not be an appropriate Union for the purpose. This view which appears to be sound in principle and quite in conformity with the aim and object of the statute finds internal support in the Act itself, namely, from Section 36(1) which deals with the question of representation of the workman (who is a party to a dispute) in a proceeding under the Act. Under that section a workman, who is a member of a Trade Union, may be represented by an officer of that Trade Union or of a federation of Trade Unions to which the said Trade Union is affiliated, and a worker who is not a member of any Trade Union may be represented by an officer of any Trade Union, connected with, or by any other workman, employed in, the industry (that is, the particular industry, and not a sister industry) in which the worker is employed. In an industrial dispute, then the workman cannot be represented by the Union of a sister industry and, in that context, such Union must be excluded and would not be relevant or appropriate when the question is whether the workman's dispute is an industrial dispute. We take this view as, in our opinion the taking up of the cause of a workman, so as to make his individual dispute an industrial dispute, is, in essence, his representation for that purpose and, so a Union, to which the Act is loath to concede the, right to represent the workman in a proceeding, arising out of an industrial dispute, should not be deemed to have the capacity or competence to represent him for the purpose of raising such dispute.

19. The first point in support of the Rule, therefore, fails.

20. The Petitioner's final submission also stands on the former ground.

21. In the case of Newspapers Limited v. State Industrial Tribunal U. P. (supra) the dispute had been referred to the Tribunal as an industrial dispute, existing between the Newspapers Limited and its workmen, asid "one of the questions referred was whether the services of the Lino operator Tajammul Hussain, had been wrongfully terminated. Referring to this form of the notification Kapur, J., observed:

the notification proceeds on the assumption that a dispute exists between the "employer and his workmen." The points of dispute in the reference, however, comprise the wrongful termination of the service of only Tajammul Hussain, a Lino operator. The words, used in the first part of the notification, show that the Government was labouring under the misapprehension that the dispute was between the employer on the one hand and his workmen on the other, which in fact, it was not Tajammul Hossain could not be termed workmen (in the plural), nor could the U.P. Working Journalists Union be called "his workmen," nor is there any indication that the individual dispute had got transformed into an industrial dispute. The very basis, therefore, of the reference was bad and it must be held to be so.

22. In the case before us the order of the Government of West Bengal, dated April 9, 1956, referring the dispute to the Tribunal was in these terms:

Whereas an industrial dispute exists between Messrs. M. Mansukhlal and Company, 34 Netaji Subhas Road, Calcutta, and one of their workmen, namely, Shri Chunilall Gordhandas Seth represented by Khimjee Hunsraj Employees' Union, 4/B Machuabazar Street, Room No. 8, 1st floor, Calcutta, regarding the matters specified in the schedule;

23. And whereas it is expedient that the said dispute should be referred to an Industrial Tribunal constituted u/s 7 of the Industrial Disputes Act. 1947 (XIV of 1947).

24. Now, therefore, in exercise of the powers conferred by Section 10 of the said Act, the Governor is pleased hereby to refer the said dispute to the Sixth Industrial Tribunal constituted under notification No. 1909 Dis./D/12L-5/54, dated May 2, 1955, for" adjudication.

25. The said Sixth Industrial Tribunal shall meet at such place and on such dates as it may direct.

Schedule

26. (i) Is the termination of service of Shri Chunilal Gordhandas (Seth justified? To what relief is he entitled?

27. It will be seen that the dispute referred to the Tribunal, was described as a dispute between M. Mansukhlal and Company, and one of their workmen. It was not even referred to the Tribunal as a dispute between the said Company and its

workmen. It is clear, therefore that the Government was fully aware that it was an individual workman's dispute and not a dispute between the said Company and its workmen in general which was being referred to the Tribunal.

28. This case is, therefore, far worse from the workmen's point of view than the case of Newspapers Limited v. State Industrial Tribunal, U. P. (supra).

29. Regarding the reference in that case, Kapur, J., further observed:

In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is 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.

30. In the face of these observations the Petitioner's challenge and the Tribunal's competency and the opposite parties locus standi must fail.

31. In the case before us, the Industrial Tribunal did not entertain the reference but refused to adjudicate upon the dispute on the ground that it was not an industrial dispute, as defined in the Industrial Disputes Act, and that, as such, it had no jurisdiction to decide it. It must be held on the authorities, cited above, that the Tribunal was right in its decision and there is, therefore, no ground for interference under Article 227 of the Constitution. The other ground mentioned in the award of the Industrial Tribunal and challenged by the Petitioner's in this period No. (ii) in support of this Rule, need not be considered in the circumstances and we express no opinion on the same.

32. The petition is, therefore, rejected and the Rule discharged. But, in the circumstances of the case, we make no order as to costs.