

(1974) 10 CAL CK 0009
In the Calcutta High Court

Deepak Industries Limited and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 11-10-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 2A, 36

Citation : 79 CWN 410 : (1975) 1 LLJ 293

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Salil K. Roy Chowdhury, J

Bench : Division Bench

Judgement

Salil K. Roy Chowdhury, J.—This is an appeal from an order discharging the Rule in a writ petition by the appellant.

2. The appellant filed the writ petition challenging an order being Order No. 34 of the Judge, First Industrial Tribunal, West Bengal, dated the 17th of August, 1970. The Appellant which is a company incorporated under the Indian Companies Act is the proprietor of M/s. New Allenberry Works having its factory at the premises No. 62, Hazra Road, Calcutta which employed 300 Workmen in its factory at Hazra Road started Absenting themselves from their duties and from the 2nd week of November, 1967 without any prior leave application and sanction. There were also employees who did not join after their expiry of leave period and other employees were charge-sheeted and after Holding due enquiry on notice to them, they were dismissed. Some of the employees left the employment without notice and in these ways the employees contravened the relevant provisions of the certified standing order and the appellant after taking appropriate proceeding has duly dismissed a total number of 174 workers on various counts as stated in the petition.

3. It is an admitted position that the 174 dismissed workmen of the appellant were not members of the union which espoused their cause before the Tribunal and it is also an admitted position that there is no resolution either of the general body of the workmen of the appellant or of the executive body of the union and it is also an admitted position that the said 174 dismissed workmen neither

individually nor as a body authorised the union to espouse their cause before the said Tribunal. In these circumstances, the appellant contended that there existed no Industrial dispute within the meaning of Section 2(K) of the Industrial Disputes Act, 1947. The appellant further contended that there existed no union of the workmen in the name of New Allenberry Workers" Union. At the material time and none of the said 174 workers were the members of the said union and as such it had no representative capacity so far as the said employees of the appellants were concerned. The appellant also alleged, that the Tribunal had no jurisdiction as there was no industrial dispute and the order of reference by the Government of West Bengal, Labour Department, dated the 20th of November, 1968 was incompetent.

4. The main question raised before the Tribunal was that the reference was not maintainable and the union had no authority or locus standi to sponsor or espouse the case of the said 174 workmen of the appellant; The learned trial Judge held that there was evidence that the union had espoused the cause of the said 174 discharged workmen though they were not members of the said union and as such the rule was discharged. But the learned Judge expunged a portion of the judgment and order of the Tribunal which contained disparaging remarks against one Sri K.L. Purohit, the personnel officer of the appellant.

5. Mr. P.P. Ginwalla appearing for the appellant challenged the order of the Tribunal and urged that there was no industrial dispute at the date of the reference made by the Government of West Bengal, Labour Department by the order dated the 20th of November, 1968 and as such Tribunal had no jurisdiction and, the union had no locus standi to represent or espouse the cause of the said 174 dismissed employees of the appellant. Mr. Ginwalla's main argument was that there was no resolution of the union to take up the cause on behalf of the said 174 dismissed employees of the appellant who were admittedly not members of the union at the date of the reference or at any time and secondly, no individual member has referred the dispute or authorised the union to represent them before the Tribunal. Mr. Ginwalla's submission was that the Tribunal was wrong in holding that the union has taken up the dispute for the said 174 workmen of the appellant and espoused their cause and further the Tribunal was wrong in holding that as there was large number of individual disputes and, therefore, it come u/s 2A of the Industrial Disputes Act. Mr. Ginwalla submitted on behalf of the appellant that the Tribunal having held that the said 174 workmen concerned were admitted not members of the union which was espousing their cause on the date of reference, that is, on the 20th of November, 1968 it became incumbent on the union to show that there was any resolution of the general body of its members or any individual workman whose disputes were referred authorised the union to espouse the cause before the Tribunal. In the absence of such authorisation or resolution the union had no locus standi before the Tribunal and the provision of Section 2A has no application in this case as the order of reference does not relate to the same. Mr. Ginwalla strongly relied on a Division Bench decision of the Madras High Court in

the The Kandan Textile Ltd. Vs. The Industrial Tribunal (1) and Others, , where a writ petition for quashing the award of Tribunal was asked for inter alia on the ground of lack of authority of the union to represent the workman before the Tribunal. In that case the cause of workman was taken up by the union and the company challenged the capacity of the union to represent the general body of the workers or any section of the workman before the Tribunal. It was held that in such case it was incumbent on the union by production of the relevant records to positively establish the fact that the union was entitled to represent and that it was as a matter of fact representing the aggrieved workers before the Tribunal and it was further held that the mere finding of the Tribunal that the union was registered under the Trade Union Act and, therefore, could represent the workers u/s 36(1) of the Industrial Disputes Act was not correct. It was further held that in spite of the locus standi of the union being challenged neither the president, nor the secretary, was able to produce any minute book or document showing that at a meeting of the workers there were any record showing the origin or existence of the union. Reliance on the certification of registration under the Trade Union Act is not conclusive proof of its real existence. It may simply raise a presumption to this effect In the fact of that case it was held that the union failed to produce any documentary evidence in spite of its locus standi being directly challenged. It was held that the union had no locus standi and the whole reference was bad in law and unsustainable. It was further observed that the unions of these kinds may be created by mere letter-heads and self designation and the said award was quashed. Mr. Ginwalla has submitted that the said principle is very sound and applies to the facts of this case and it must be held that the award is bad on the ground that the union had no locus standi to espouse the cause of the said 174 dismissed workmen of the appellant. Mr. Ginwalla had also submitted that it is an admitted position that there was no individual workman who has raised any dispute and as such Section 2A of the Industrial Disputes Act has no application to this case. Mr. Ginwalla also referred to Halsbury Third Edition "Volume" 9 page 349 Article 820 in support of his contention that when an order of an inferior Tribunal is challenged on the ground of jurisdiction unless it is expressly shown on the face of the proceeding that the particular matter is within the cognizance of the particular Tribunal. Mr. Ginwalla relying on the said principle submitted that there was nothing before the Tribunal to show that the said union had any locus standi to represent the said 174 workmen of the appellant who were admittedly not its members to espouse their cause before the Tribunal. Mr. Ginwalla submitted that in the absence of any resolution of the general body of the said union or authorisation by the individual workman, it must be held that the union had no locus standi before the Tribunal and as such the award was without jurisdiction and bad. On the same principle Mr. Ginwalla cited two other Madras decisions in Visalakshi Mills Ltd. Vs. Labour Court and Another, , and Nellai Cotton Mills Ltd. v. Labour Court Madurai 1965 I L.L.J. 95, Mr. Ginwalla summarised his argument challenging the said award on the ground that there was no industrial dispute as no individual workman has raised any dispute and authorised the union to represent his cause and secondly,

it was incumbent on the union to produce either a resolution of the general body of the members of the union or authorisation by the individual member whose cause they espoused before the Tribunal and in the absence of the same it must be held that the union had no locus standi before the Tribunal and as such the award was without jurisdiction.

6. Mr. Ramesh Banerjee appearing for the union?respondent No. 3 submitted that the appellant has throughout the proceedings objected the jurisdiction of the Tribunal on the specific ground that the 174 workmen were not members of the union and at this stage the appellant cannot be heard to take the objection on a new ground, viz, the absence of a resolution by the union which Was never raised before. Secondly, he has Submitted that there is no law that the fact of a union espousing the cause of non-member co-employees can only be established by a resolution of the Executive Committee or the general body. He has Submitted that the test will vary from case to case. The existence or non-existence of an industrial dispute has to be decided on a consideration of all the relevant circumstances. He submitted that considerations which would be relevant in dealing with a dispute relating to an individual employee's dismissal shall not be relevant in dealing with a case where large number of employees Have been dismissed. Similarly, considerations which would be relevant when the cause of the dismissed workmen is espoused by a general, industry wise union would not be relevant when the cause is espoused by the union of workmen of the same establishment. He also submitted that the 174 workmen themselves as a group would be justified in supporting each other's cause and thus give to it the character of a collective dispute is a very relevant consideration. Mr. Banerjee further submitted that in this case there are sufficient materials on record to warrant a conclusion that the union had, in fact, espoused the cause of the 174 dismissed workmen. It was his submission that in any event, the Tribunal's conclusion that the union has espoused the cause of those work-mien is a finding of fact which the appellant has not challenged as perverse, and, therefore, it is not entitled to agitate the said question at this stage. He further submitted that when a Tribunal passes an order which is within its competence and jurisdiction it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision. Mr. Banerjee submitted that the disputes here, even assuming but not conceding that there are so many individual disputes might have validly been referred to adjudication u/s 2A read with Section 10 of the Act. Therefore, the present reference must not fail merely because it purports to be made u/s 10 of the Act is not a sound proposition and should be rejected by the Court. Mr. Banerjee referred to several Supreme Court decisions. Those being : Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, , The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, , Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), and lastly, Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, ; Relying on those decisions and principles laid down which I will

refer hereinafter, Mr. Banerjee concluded his argument relying on the following contentions, firstly, that this is a case of finding of fact by the Tribunal which is not disputed that the union of the company was registered under the Trade Union Act and the certificate of registration was produced and the agreement between the union and the company dated the 23rd of September, 1967 clearly established the authority of the union to represent the dismissed workmen. Secondly, as soon as the dismissal took place protest was made by the union to the management which is referred to at page 90 of the Paper Book and thirdly, the union took up the conciliation which would appear in pages 132 and 142 of the Paper Book. All those facts taken together according to Mr. Banerjee clearly show that the union had the authority to espouse the cause of the 174 workmen. This fact was never challenged by the appellant but disputes were raised only on the ground that the said 174 dismissed workmen were not members of the union. Mr. Banerjee finally submitted that real test is the "community of interest" which gives authority to the union to represent the disputes before the Tribunal and here all the other members of the union who are employees of the appellant have admittedly and definitely interest in common with the dismissed employees in the facts and circumstances of this case and as such the appeal must be dismissed as the award is a good in law and the Tribunal had jurisdiction to hear the union and was right in holding that the union had locus standi to espouse the cause of the dispute of the said 174 workmen before the Tribunal.

7. Considering the contentions of the parties very carefully we come to the conclusion that this appeal should be allowed and the Rule issued must be made absolute and the appropriate writ should be issued as asked for quashing the impugned order of reference and the impugned award being Annexures "A" and "B" to the petition. The principles which emerge from the decisions cited by the parties seem to be as follows:

2K. "Industrial Dispute" 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 the conditions of labour of any person. If only an industrial dispute within the said definition of the Act arises then and then only u/s 10 the appropriate Government can reasonably form an opinion that any industrial dispute exists or is apprehended and it may by an order in writing make a reference u/s 10 of the Industrial Disputes Act, 1947. So, the existence of industrial dispute is a condition precedent of exercising jurisdiction by the appropriate Government u/s 10 for making an order of reference. Here it will be convenient to set out the provision of Section 2A of the Industrial Disputes Act, 1947 which was incorporated in the Act by the Industrial Disputes (Amendment Act, 1965 (35 of 1965), dated the 1st of December, 1965:

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute? Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or difference

between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

The said amendment was made by the Parliament solely with a view to modify the law established by the judicial decisions holding that an industrial dispute under the Act did not include an individual dispute which was not sponsored by other workmen or by a union of workmen. Therefore, after the amendment an individual dispute can be subject-matter of industrial dispute and can be referred to u/s 10 of the Act by an order in writing of the appropriate Government to the Tribunal for adjudication. The amended Section 2A makes it clear that when an individual dispute is not sponsored by other workmen or espoused by the union of the workmen even then it would be deemed to be an industrial dispute within the meaning of the Act. In spite of the said Amendment which brings in individual dispute within the scope of the Act it has not made any difference on the principles as to what would constitute an industrial dispute within the meaning of the Industrial Disputes Act. If it is an industrial dispute, that is a dispute raised by an individual, it must be raised by him and reference may be made in due course for adjudication under the said Act. On the other hand, if a group of workmen raise a dispute that can also constitute an industrial dispute within the meaning of the Act which may be referred to the Tribunal in due course. But when the dispute is espoused or sponsored by a union it seems to have been uniformly held by the judicial decisions which has been referred to by the parties and mentioned hereinbefore. That when the authority of the union is challenged by the employer it must be proved by production of material evidence before the Tribunal, to which such a dispute has been referred, that the union has been duly authorised either by a resolution of its members or otherwise that it has the authority to represent the workmen whose cause it is espousing. Mere fact that the said union is registered under the Indian Trade Union Act is not conclusive proof of its real existence or the authority to represent the workmen in the reference before the Tribunal. Mere negotiations by some officials of the union with the employees for conciliation or executing certain documents on behalf of the workmen prior to the reference are no conclusive proof of the authority of the union to represent the workman whose dispute it is alleged to be espousing before the Tribunal. It is immaterial whether the said union is a general union of the workmen of particular industry or it is a union of the particular establishment relating to which the dispute has arisen between it and its workmen, "In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen". See *The Bombay Union of Journalists and Others Vs. The "Hindu"*, Bombay and Another, .

8. The other principle seems to be "that in order that a dispute between a single

employee and his employer should validly referred u/s 10 of the Act, it is necessary that it should have been taken up by the union to which the employee belongs or by a number of employees." (See *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, .

9. Another principle also is that "The parties to the reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workman or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman." (See *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, .

10. It will be useful and appropriate to refer to the observations of Gajendragadkar, C.J. in the said decision in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, which are as follows;

It is well known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial disputes has necessarily to be pragmatic, and the tests which it applies and the considerations on which it relies would vary from case to case and would not admit of any rigid or inflexible formula....The object of Trade Union Movement is to encourage the formation of larger and bigger Unions on healthy and proper Trade Union lines, and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred u/s 10(1) of the Act, it should receive the sup. port of the union consisting exclusively of the workmen working in. the establishment concerned.

Now applying the said principles to the facts of this case it appear that from the very beginning the appellant, that is, the management contended that the union had no authority to represent the 174 dismissed workmen of the appellant. That was the stand of the appellant at the conciliation proceeding and also before the Tribunal to which the alleged industrial dispute was referred u/s 10(1) of the Industrial Disputes Act by the State Government. Therefore, in such circumstances it became incumbent on the respondent-union to produce material and documentary evidence to show it has the requisite authority to represent the dismissed 174 workmen of the appellant. It is an admitted position that the said 174 workmen were not members of the respondent-union at the date of the reference. It is also not disputed that none of the said 174 employees had raised any dispute with the appellant or supported the respondent-union in the said reference by any documentary or other material supports. Merely because the union was registered under the Indian Trade Union and sometime prior to the reference it was a party to an agreement with the appellant representing the workmen are not conclusive to give the alleged dispute "the character of industrial dispute" within the meaning of Section 2K of the Industrial Disputes Act, 1947. The same also should be said about the correspondence by the union

on behalf of the dismissed workmen with the appellant and their employees would not confer the authority on the respondent-union to represent the dismissed 174 employees. There must be some material on which it can be held reasonably that the union is duly authorised to espouse the cause of the said 174 dismissed employees of the appellant in the said reference. In the absence of any such material evidence either a resolution of the members or authorisation by an individual workmen out of the said 174 workmen or substantial number of them it cannot be said that the respondent-union had the capacity of authority to represent the said 174 dismissed employees of the appellant at any stage. It is to be noted that all through the appellants were disputing the locus standi of the union to represent the said 174 dismissed employees and in spite of such question being raised by the appellant the respondent union has failed to produce any evidence to establish or prove its authority in the reference to represent the dismissed employees. In the absence of authorization by individual workman or a number of workmen out of the said 174 dismissed workmen of the appellant or in the absence of any resolution of the members of the respondent-union to espouse the cause of the 174 dismissed workmen of the appellant in the reference it cannot be said on the facts and in the circumstances of this case that the union had locus standi to represent the said 174 dismissed employees of the appellant. Before the principle of community of interest is laid down it must be proved by material evidence that the dismissed 174 workmen of the appellant are raising a dispute with the appellant. In the absence of such proof, the question of community of interest cannot arise for obvious reason that in order to be a community of interest there must be interest existing between all of the workmen. If the said 174 have ceased to have any interest in the employment of the appellant after their dismissals there cannot exist any community of interest between the said 174 dismissed employees and the existing employees of the appellant any longer. In the facts of this case it must be held that there was no industrial dispute within the meaning of Section 2(K) of the Industrial Disputes Act, 1947 as the union who espoused the cause of the said 174 dismissed employees of the appellant had no valid or legal authority to represent the dismissed employees.

11. Therefore, the appeal is allowed. Rule is made absolute. Let appropriate writs be issued setting aside and quashing the impugned award being Order No. 34 dated the 17th of August, 1970.

12. No order as to costs.

Sankar Prasad Mitra, C.J.

I agree.