

(1958) 10 BOM CK 0027

In the Bombay High Court

Case No : Reference (I.D.A.) No. 20 of 1958

Eastern Electric Light and Power Company (Private) Ltd.

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 22-10-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 2, 20(3), 3

Citation : (1959) 1 LLJ 301

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

Bench : Single Bench

Judgement

1. This is a reference made by the Government of Bombay, under Sub-section (5) of S. 12 of the Industrial Disputes, Act, 1947, for adjudication of the dispute between the Eastern Electric Light and Power Company (Private), Ltd., and the workmen employed under it over the following demand :- "Sri Maruti Sakharam should be employed on the same post and on the same salary and dearness allowance effective from 3 August 1957 and be paid all the wages that would have accrued to him from month to month."

* * *

2. The parties were heard only on the questions regarding validity or otherwise of this reference. Only those questions are considered in this award. 5. Now, validity of the reference was firstly challenged on the ground that the dispute referred to this Court is only an individual dispute as distinguished from an industrial dispute, because it referred to granting of employment and payment of salary and dearness allowance only to the workman. It was urged that there was nothing to show that the other workmen of the company had espoused his cause but on the contrary the Government labour officer's letter, dated 18 December 1957, Ex. 19, and the letter, dated 6 January 1958, written by the general secretary of the association, Ex. 20, showed that only the workman had raised and continued this dispute as his own. It was argued that therefore this was only an individual dispute, which would not be covered within the scope of the

definition of the term "industrial dispute" as given in S. 2(k) of the Industrial Disputes Act. In this behalf, reliance was placed on a ruling in *Sri Rama Vilas Service, Ltd. (Kumbakonam branch) v. State of Madras* and another 1956 I L.L.J. 498 wherein it was held that an individual dispute between a workman and his employer would not be an industrial dispute unless the cause of such workman has been taken up or espoused by the other workmen in the establishment. Now, the definition as given in S. 2(k) of the Industrial Disputes Act, 1947, is as follows :- "'Industrial dispute" means any dispute or difference between employers and employers or between employers and workman, 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."

3. This definition was considered in a number of rulings on the question whether it would include a dispute concerning an individual workman within its scope or not and the question evoked considerable conflict of opinions in the High Courts and in industrial tribunals. Then this very question came up for decision before the Supreme Court in *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, , and after considering the divergence of opinions and the various rulings on the point it was pleased to hold as follows :-

"The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is a considerable reason behind it. Notwithstanding that the language of S. 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 act 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 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."

4. So this ruling upheld the preponderance of judicial opinion, which was clearly in favour of the view that a dispute between an employer and a single employee cannot per se be an industrial dispute within the meaning of S. 2(k), but it might become one if it is taken up by the union or a number of workmen. The same question again came up for consideration before the Supreme Court of India in another ruling, viz., *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . In this ruling also the divergence of opinions was considered and it was held that the correct view was that the expression "industrial dispute" as ordinarily understood and construed would convey a dispute between an employer on the one hand and the workmen acting collectively on the other. It was further observed that the view that an individual dispute is comprised in an industrial dispute must, unless there is something peculiar as to the facts, be held to have been wrongly decided. Then this very question was considered by the Calcutta High Court in the ruling in *Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another*, , wherein it was observed as follows :-

"In my opinion, therefore, when 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 an individual dispute between the employer and the individual workman, and is not an industrial dispute and never developed into one."

5. Considering these authorities, it seems to have been well established that a dispute between an employer and a single employee would become an industrial dispute if it is taken up by a union or a number of workmen. It was then urged that even if a union has taken up a dispute, it must be shown that other workmen have espoused the cause of the concerned workman. It was argued that in the present case, the letters Exs. 19 and 20 show that the cause of the workman was taken up only by himself and the general secretary and so the present dispute was not an industrial dispute. The general secretary's letter, Ex. 20, in my opinion, cannot be interpreted to mean that only he had taken up the dispute. The letter mentioned that the association had under advice decided to pursue the demand, clearly meaning thereby that the union had as a whole taken up the workman's dispute. In a ruling in *The Management the Hindustan Times Ltd., New Delhi Vs. The Chief Commissioner, Delhi and Others*, , it was held by the High Court of Punjab as follows :-

"I cannot for a moment accept the contention of the learned counsel for the company that the union has to prove that those of its members who are employed by the company are supporting M. L. Madan by proving that they have passed a resolution in his favour or some such means. In my opinion, there must be a presumption that when the union takes action it is as a representative of and with the support of its members and that it is for the company to prove that the facts are otherwise and that the members of the union are not behind it in its action."

6. So, considering the letter Ex. 20, and relying on the above ruling, I think that there is sufficient evidence to show that the union, and through the union the other workmen, had taken up or espoused the cause of the workman. The conciliator's file shows that in the year 1957 thirty-five workmen of the company were members of the Bombay General Workers' Association, the union which took up the cause of the workmen. [Vide Ex. 3A/3.] So it must be considered that those workmen must have espoused his cause. Then, considering the ruling relied upon on behalf of the company, viz. 1956 I L.L.J. 498, it does not seem to be applicable to the facts of the present case. In that ruling the cause of the dismissed workman was espoused by a union claiming membership of only 40 workmen out of 600 workmen employed in the branch. The other union, which consisted of the majority of the workmen at that branch, had supported the act of the management. That showed that a considerable number of workmen had not only not espoused the cause of the workman concerned, but were against being granted any relief to him. Under these circumstances, it was held that the dispute in that case was only an individual dispute and not an industrial dispute.

In the instant case there is nothing to show that the other workmen of the company were in any way against the relief being granted to the workman. The statement of claim shows that the workman was one" of those who filed proceedings against the company under the Payment of Wages Act. It was alleged that his service was terminated with a view to victimize him for filing those proceedings and to force him and others to withdraw the proceedings. So the other workmen would not be against the reliefs being granted to him. Hence the dispute referred to this Court would not be only an individual dispute but it was one which was taken up by the other workmen and the union. In this view of the matter, the present reference cannot be held to be invalid on the ground that the dispute referred under it was only an individual dispute. 6. Validity of the reference was then challenged on the ground that as appears from the certificate of death registry, Ex. 18, the workman died on 13 May 1958 while this reference was made on 17 May 1958. It was contended that the dispute concerning the workman was not an industrial dispute because it was not connected with the employment or non-employment or the terms of employment or with the conditions of labour of "any person," as contemplated under S. 2(k) of the Industrial Disputes Act, and hence the reference was invalid. To decide this contention, it should first be considered as to with whom and how the present dispute is connected. The demand as mentioned in the order of reference consists of two parts. The first part relates to the question of employment of the workman on the same post and on the same salary and dearness allowance; and the second part relates to the question of wages that would have accrued to him from month to month to be paid to him. In other words, the second part consists of the demand for compensation and/or damages. It cannot be disputed that the first part of the demand concerned only the workman because it was purely of a personal type. As for the second part of the demand is concerned, it was urged that it can be granted to the heirs and successors of the deceased workman because it was very similar to a money claim. But in that case the question that was raised was whether it was an independent and a separable one from the first part of the demand. In a ruling in *Rai Bahadur Bansilal Abirchand Spinning and Weaving Mills, Hinganghat v. Sri Nathu, son of Gangadhar Kosti of Hinganghat* [Bombay Government Gazette, Part I-L, dated 17 July 1958, at p. 3651], a question arose as to whether the claim for reinstatement and compensation can be granted to and inherited by the heirs of a deceased worker or not. It was held therein that a dispute between an employee and his employer is similar to a dispute arising under the law of torts which gives rise to what is known as personal cause of action and such disputes die with the person and the cause of action does not survive. It was further held therein that the question regarding back wages and/or compensation are questions which arise incidentally in cases where the demand is for reinstatement. Similarly, in another ruling, viz., *Manager, Pyarchand Keshrimal Porwal, Bidi Factory, Kamptee v. Ganesh, son of Sukhdeo and others* [Bombay Government Gazette, Part I-L, dated 4 September 1958, at p. 4332, relevant remarks at p. 4337], it was held that the reliefs regarding reinstatement and back wages are of the nature of personal rights and

they do not survive to the representatives of a deceased worker. I respectfully agree with the view expressed in these two rulings, and am of opinion that the demand of compensation and/or damages on the ground that the action of termination of service or discharge or dismissal was illegal and improper, is neither an independent or a separable demand from that of employment or reinstatement, but is only a consequential or an incidental one. So in that case the second part of the demand would also concern only the workman. Assuming that the second part of the demand concerning compensation and/or damages is an independent and a separable one, then evidently it can be granted only to the heirs and successors of the deceased workman in the present case. The demand as mentioned in the order of reference only states that the workman should be paid the wages that would have accrued to him from month to month and nothing is mentioned about the heirs and successors of the deceased workman. Of course, till now no steps have been taken to get the reference so amended as to include the heirs and successors of the deceased workman and it is not even shown as to whether there are any heirs and successors and as to who they are; but the fact would remain that under this assumption the second part of the demand would relate to the heirs and successors of the deceased workman. The present dispute would, therefore, be connected with the deceased workman and/or his heirs and successors.

7. The question then to be considered is whether the deceased workman and/or his heirs and successors can be held to have been covered within the scope of the term "any person" as contemplated under S. 2(k) of the Industrial Disputes Act. This part of the section came up for interpretation before the Supreme Court of India in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . In that ruling the facts were that services of one Dr. K. P. Banerjee, who was appointed as assistant medical officer of the Dimakuchi Tea Estate, were terminated. The other workmen of the Dimakuchi Tea Estate through the secretary of their union espoused the cause of Dr. Banerjee and a dispute was raised. That dispute was referred to the tribunal under S. 10(1)(c) of the Industrial Disputes Act. The tribunal held that Dr. Banerjee was not a workman within the meaning of the term under the Industrial Disputes Act and his case was not one of an industrial dispute under the said Act and hence it had no jurisdiction to grant him any relief. Appeals were then filed to the Labour Appellate Tribunal at Calcutta and then to the Supreme Court of India. Analysing the definition clause in S. 2(k), the Supreme Court observed that it falls easily and naturally into three parts, viz. :

(1) there must be a dispute or difference, (2) the dispute or difference must be between employers and employers or between employers and workmen or between workmen and workmen, and (3) the dispute or difference must be connected with the employment or non-employment or terms of employment or with the conditions of labour of any person.

8. It then observed that a little careful consideration would show that the

expression "any person" could not mean anybody and everybody in this wide world. It further observed that the subject-matter of the dispute must relate to employment or non-employment or to terms of employment or conditions of labour of any person and that would necessarily import a limitation in the sense that a person in respect of whom the employer-employee relationship does not exist or can never possibly exist, cannot be the subject-matter of a dispute between employers and workmen. Further, considering the term in view of the scheme of the Act, it observed that if the term "any person" would include anybody and every-body, it may mean that the workmen can raise a dispute regarding the salary or remuneration paid to the manager or chief medical officer. In that case that dispute would be referred for adjudication; but the manager or the chief medical officer could not obviously be a party to the dispute because he would not be a workman within the meaning of the Act and there would not be any dispute between him and his employer. That being the position, the award, if any given by the tribunal, would be binding on the parties to the dispute and not on the manager or the chief medical officer. If in such a case, an award is made, that award though binding on the employer would not bind the manager or the chief medical officer and such an eventuality could not have been contemplated. It further observed that the party raising the dispute must have either a direct interest in the subject-matter of the dispute or a substantial interest therein in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It is the community of interest of the class as a whole which would furnish the real nexus between the dispute and the parties to the dispute. So, where the party to the dispute is composed of workmen who espoused the cause of another person whose employment or non-employment, etc., may prejudicially affect their interest, the workmen must have a substantial interest in the subject-matter of dispute. At the end, the observations were summarized as follows :- "To summarize : Having regard to the scheme and objects of the Act, and its other provisions, the expression "any person" in S. 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are :

(1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and

(2) the persons regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

9. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose

employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest."

10. So, it clearly appears from the above ruling that the term "any person" in S. 2(k) would not mean anybody and everybody in this wide world, but would mean only the persons in whose employment, non-employment, terms of employment or conditions of labour, as the case may be, the parties to the dispute have a direct or substantial interest or there is the community of interest between them. It should then be considered whether the deceased workman and his heirs and successors were such persons. As far as the heirs and successors are concerned, the employer-employee relationship between them and the company could not have ever existed or possibly exist. Further the workmen of the company could not have any direct or substantial interest with them or there cannot be any community of interest with them. So, as far as the heirs and successors of the deceased workman are concerned, they would not be covered within the scope of the term "any person" as interpreted in the above ruling. As far as the deceased workman was concerned, it was urged that the other workmen of the company would be concerned with him because even though no relief can be granted to him they would be interested in the question as to how he was treated and how his service was terminated. It was also urged that the treatment given to him might become a precedent to be followed in future and so the other workmen had a direct and substantial interest in him. Moreover, the dispute concerned his employment. But, as he unfortunately died before the reference, no relief can be given to him and so on the date of the reference he would not be a person, who would be covered within the scope of the term "any person" as interpreted in the above ruling. Hence, it must be held that the dispute on the date of the reference was not an industrial dispute.

11. But the main question to be considered is whether the fact that the dispute was not an industrial dispute on the date of the reference would invalidate the reference or not. Relying on S. 20(3) of the Industrial Disputes Act, it was argued on behalf of the company that the proceedings before a labour court would be deemed to have commenced on the date of the reference of the dispute for adjudication and so at least on the date of the reference the dispute must be an industrial dispute. The section relevant for the consideration of this point is the section under which the reference is made and not S. 20(3). Now, this question was considered in some rulings of the Labour Appellate Tribunal of India and of the Supreme Court. In *Indian Rolling Mills Company, Kanpur v. Their workmen* 1954 II L.L.J. 652 it was considered at considerable length and held therein that where a dispute has arisen before the closure of the mill's business, it does not cease to be an industrial dispute because subsequently the industry is closed; and it can well form the subject of a reference by Government subsequent to the closure. There is no provision of law that the closure of an industry extinguished the industrial dispute, which had arisen before such a closure. Similarly, this question was considered by another Bench of the Labour Appellate Tribunal of India in *Hotel Mazdoor Sabha v. Radio Hindu Hotel and*

others 1956 II L.L.J. 522. It was contended before the tribunal that the reference was not valid as no industrial dispute as defined in the Industrial Disputes Act could be raised as the real subject-matter of the dispute, viz., the industry, did not exist at the time of reference. This contention was negatived and it was held that a clear distinction exists between two classes of cases, viz. : (1) where a cause of action arose at a time when the business was being carried on; and (2) where the cause of action arose at a time when the business was closed.

12. Although in regard to the second category of cases no industrial dispute as defined in the Act could be raised as the real subject-matter of the dispute, viz., the industry, could not be taken to exist when the industrial dispute is said to have arisen, yet where the dispute had already arisen before the closure of the business, it does not cease to be an industrial dispute because subsequently the industry is closed. It can very well form the subject of reference by the Government and there is no provision of law to the effect that the closure of an industry extinguishes the industrial dispute which had arisen before such closure. The same point was considered by the Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, . In this ruling certain disputes arose before the closure of the mill and a reference was made. A contention was raised that as the mill did not exist on the date of the reference, the reference was invalid. Considering that contention, the Supreme Court held as follows :- "We do not find anything in the language of S. 3 of the Act to warrant the imposition of this additional limitation on the power of the State to make a reference. That section only requires, apart from other conditions, with which we are not concerned, that there should be an industrial dispute before there can be a reference, and we have held that it would be an industrial dispute if it arises out of an existing industry. If that condition is satisfied, the competence of the State for taking action under that section is complete, and the fact that the industry has since been closed can have no effect on it. Any other construction would, in our opinion, result in serious anomalies and grave injustice. If a workman improperly dismissed raises an industrial dispute and before action is taken by the Government the industry is closed, what happens to the right which the Act gives him for appropriate relief, if the Act, vanishes into thin air as soon as the industry is closed ? If the contention of the appellant is correct, what is there to prevent an employer who intends for good and commercial reason to close his business, from indulging on a large scale in unfair labour practices, in victimization and in wrongful dismissals, and escaping the consequence thereof by closing down the industry ? We think that on a true construction of S. 3 the power of the State to make a reference under that section must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business."

13. It is clear from the above rulings that the date of reference is not a material date for considering whether the dispute existed as an industrial dispute on that

date or not. What is material to be considered is whether on the date on which the right which is a subject-matter of the dispute arose, the dispute was an industrial dispute or not. Of course, all the three rulings cited above referred to closure of the mills and to the employers; but the same principle would apply with equal force even to the cases where something happens on the workmen's side subsequent to an industrial dispute having arisen. In this behalf it would be helpful to note the ruling in *Ram Lal Guramal Textile Mills Vs. State of Punjab and Others*, . In that case the change in conditions occurred on the side of the workmen. The change was that an individual workman's dispute was taken up by one union and subsequently a new trade union came into existence and took up that dispute and represented the workman. It was then observed as follows :- "As long as trade union which for the time being represents a workman of an industry takes up an individual workman's; dispute it continues to remain an industrial dispute till it is finally decided and it is not necessary that the same union may remain in charge of that dispute till adjudication."

14. Of course this ruling does not directly deal with the point at issue in the instant case; but it is quite helpful to show that subsequent change in conditions even on the workman's side would not invalidate the reference made by the Government. Now, considering the instant case in the light of the above rulings, it seems that when the subject-matter of the present dispute arose, the workman was alive and his cause was taken up by the union before the conciliator. At that time he would be covered within the scope of the term "any person" as interpreted by the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . So, on that date the dispute was an industrial dispute as contemplated under the Industrial Disputes Act. Hence relying on the above authorities it must be held that the reference was not invalid simply because on the date of the reference the dispute could not be an industrial dispute.

15. In the result, the preliminary objections raised by the company against the validity of the reference are overruled. It is held that the reference was quite valid and hence this Court will have jurisdiction to adjudicate upon this dispute. The reference would, therefore, be heard on other points. 10. This award - part I should be submitted to the Government.