

(2002) 09 KL CK 0052
In the High Court Of Kerala
Case No : O.P. No. 18761 of 2002

Framatone Connectors O/E/N Ltd.

APPELLANT

Vs

Framatone Connectors O/E/N Workers" Union

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(A)

Citation : (2002) 09 KL CK 0052

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Antony Dominic and A.K. Jayasankar Nambiar, for the Appellant; A.V. Xavier, Jolly John and Thushara James and M.K. Aboobacker, Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—The power of the Industrial Tribunal/Labour Court to implead a workman whose cause of denial of employment is sponsored by the Union is the subject of the Writ Petition.- Ext. P6 order passed by the Industrial Tribunal in I.D. No. 17 of 2001 is under challenge at the instance of the management. The issue referred for adjudication is whether the denial of employment to the 12 casual workers, whose names are annexed to the order of reference, is justifiable. In the said reference the workers (respondents 2 to 12) filed an application for impleadment. Reference was at the instance of the first respondent union, which is yet to get registration. The contention of the management is that a reference by the union u/s 2(k) of the Industrial Disputes Act (hereinafter referred to as the Act) cannot be converted to that of a reference by the worker u/s 2A of the Act.

2. Section 2A was introduced by way of an amendment as per Act 35 of 1965. The said section reads as follows:-

"2-A. 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".

Therefore, it is not now in dispute that any dispute or difference between an individual workman and his employer in relation to the discharge, dismissal, retrenchment or termination is an industrial dispute. It is significant to note that such a dispute by an aggrieved workman is an industrial dispute "notwithstanding that no other workman nor any union of workmen is a party to the dispute". Trade union tyranny was the reason for introduction of Section 2A, as observed by the Supreme Court in *Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others*, wherein at paragraph 15, it is stated as follows:-

"An individual workman if punished by the employer and if he was not a member of the recognised union, the latter was very reluctant to espouse the cause of such stray workman and the individual workman was without a remedy. Cases came to light where the recognised union by devious means compelled the workmen to be its member before it would espouse their causes. The trade union tyranny was taken note of by the Legislature and Section 2A was introduced in the Industrial Disputes Act, 1947 by which it was made distinctly clear that the discharge, dismissal, retrenchment or termination of service of the individual workman would be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute".

3. What about a situation when an individual workman loses confidence in the union during the trial of an industrial dispute in relation to the discharge, dismissal, retrenchment or termination of individual workmen? There can also be a situation where the Union would Withdraw the support to the workman. Yet another situation is when the competency of the union is questionable. In such situations is the workman to be relegated to pursue his remedy u/s 2A from stage one?

4. In the instant case the cause of alleged denial of employment to the workers, namely respondents 2 to 13, was espoused by the first respondent union. The union is yet to get registration. Therefore the workmen apprehend that there is a chance of the Tribunal rejecting the reference since the union is not a registered one and hence they filed a petition for impleadment by way of abundant caution. The management contends that the attempt of the workmen to convert an industrial dispute u/s 2(k) by the Union to an industrial dispute by individual workmen u/s 2A is impermissible. I am afraid the contention as such cannot be appreciated. There is no case for the management that an industrial dispute by the workmen is otherwise incompetent. As observed by the Tribunal there is no case for the management that a reference at the instance of the 12 workmen whose names are annexed to the reference order is not maintainable. If that be so, should not the Tribunal permit the individual workmen to get themselves

impleaded in their individual capacity and continue the proceedings rather than reject the reference on a technical plea and entertain the same reference at the instance of the workmen? The situation would have been probably different in the absence of Section 2A. Not only that in the instant case the names of the 12 workmen who filed the impleading petition were annexed to the reference order itself. Admittedly the management does not have a case of enlargement of the scope of reference by the impleading petition, in which case also the situation would have been different.

5. In *Steel Authority of India Ltd. Vs. Hindustan Steel Employees Union and Others*, a Division Bench of the Calcutta High Court was of the view that once the issue referred for adjudication is one referable to Section 2A, namely discharge, dismissal, retrenchment or termination of an individual workman, it does not matter as to whether it is a union sponsored reference or one by the individual workman. At paragraph 22 it is stated as follows:-

"Thus the dispute in essence was an individual dispute, though supported by some of the workmen. Therefore, whether the dispute referred to in the order of reference is an industrial dispute within the meaning of Clause 2(k) or Section 2-A of the said Act is of no consequence so far as the power of the Tribunal to adjudicate the same is concerned."

In *Ramakrishna Mills (Coimbatore) Limited Vs. The Government of Tamil Nadu and Kovai Mavatta Dravida Pothu Thozhilalar Munnertra Sangam*, a Division Bench of the Madras High Court has taken the view that even if a dispute by a union or a section of workmen is found to be incompetent, the same can be sustained by the concerned individual workman. It is held in paragraph 8 as follows:-

"After the enactment of Section 2-A it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of workmen must be sponsored by a trade union or a substantial number of workmen. In other words, even if it is not sponsored by the trade union, on a substantial number of workmen, still such a dispute will be deemed to be an industrial dispute. There is no dispute that the demand was only that of the workmen dismissed. May be it got projected through their union, the seventh respondent, and that was how it was raised. Even if the competency of the seventh respondent to raise the dispute so as to make it get the colour of a collective dispute, is a doubtful proposition, the reference cannot be held to be incompetent because it could be sustained as relating to individual workmen".

Therefore, merely because the affected workmen got themselves impleaded in the industrial dispute wherein the issue referred for adjudication is the justifiability of their denial of employment, it cannot be said that the same would either enlarge the scope of the reference or affect the ultimate outcome thereof.

6. Learned counsel for the petitioner relying on the decision in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, , contends that workman is

not entitled to separate representation when already represented by the Secretary of the Union which espoused their cause. For one thing it may be seen that the said decision was rendered at a time when Section 2A was not there in the statute. Secondly, it is not the dictum that there is absolute bar. The Apex Court only held that it is the ordinary rule and exceptional circumstances would permit deviation. It is held as follows:-

"When a dispute concerning an individual workman is taken up by the Union, of which the workman is a member, as a matter affecting workmen in general and on that basis a reference is made under the Industrial Disputes Act the individual workman cannot ordinarily claim to be heard independently of the Union. In this respect it is necessary and proper to take note of the fact that when an individual workman becomes a party to a dispute under the Industrial Disputes Act he is a party not independently of the Union which has espoused his cause. In such a matter, the ordinary rule should be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned".

7. The above decision was followed in *K.C.P. Limited Vs. Presiding Officer and Others*, *P. Virudhachalam and Others Vs. Management of Lotus Mills and Another*, . In *KCP Ltd.* the Supreme Court took note of the fact that Ram Prasad Vishwakarma's case was prior to the introduction of Section 2A. Reiterating the principle of collective bargaining the Apex Court held at paragraph 23 as follows:

"It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to project the legitimate interests of labour enters into a settlement in the best interests of labour. This would be the normal rule. There may be exceptional cases where there may be allegations of mala fide, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled to due weight and consideration."

Some of the interesting factual features in the above case are that 12 out of 29 workmen who continued their membership in the union did not agree with the terms of settlement entered into by the union with the management, during the pendency of reference, but outside the Labour Court. The settlement thus arrived at between the management and the union u/s 18(1) of the Industrial Disputes Act was duly filed in the Labour Court and the parties prayed for an award in terms of the settlement. The Labour Court, however, finding that the settlement was not acceptable to 12 workmen, refused the prayer and proceeded to consider the case of those 12 workmen on merits. In the above factual situation the Supreme Court at paragraph 17 held as follows:-

"Having given our anxious consideration to these rival submissions, we find that the terms of the settlement cannot be considered to be in any way *ex facie*, unjust or unfair and that the said settlement consequently must be held to be

binding on these contesting workmen also".

It was further held in paragraph 18 as follows:-

"When the said union having considered the pros and cons of the situation, entered into the settlement on behalf of all the workmen for whom it had taken cudgels unless the said settlement was found to be ex facie, unjust or unfair it could not be gone behind by these respondents who can be said to be parties to the same through their representative union respondent No. 2."

Again at paragraph 21 it was held as follows:-

"It is also not in dispute that parties to the settlement were the appellant company on the one hand and respondent No. 2 union on the other, which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these parties. Under these circumstances, respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative union with the company unless it is shown that the said settlement was ex facie, unfair, unjust or mala fide. No such case could be even alleged much less made out by the dissenting respondent Nos. 3 to 14 before the trial Court. It is interesting to note that before the Labour Court the only argument put forward on behalf of respondent Nos. 3 to 14 was that they were not parties to the settlement and therefore, it was not binding on them. Once it is kept in view that the entire industrial dispute was raised by respondent No. 2 union on behalf of all the 29 dismissed workmen and as it was not an industrial dispute covered by Section 2-A whereunder individual dismissed workman could come in the arena of contest, it could not be held, as wrongly assumed by the Labour Court that this settlement was not entered into u/s 18(1) of the Act by these dissenting workmen when the respondent-union did represent them from beginning to end and is still representing them as they are members of the union even at present."

It was in the above context that the Supreme Court proceeded to consider the question whether the individual workman had independent locus standi in proceedings before the Labour Court, by referring to Rama Prasad Vishwakarma's case. It is significant to note in this context that even the Rama Prasad Vishwakarma's case was also one where there was a conciliation settlement between the management and the union on the basis of which the management and the union filed a joint petition for compromise before the Industrial Tribunal. It was in such circumstances that the Apex Court held that the ordinary rule should be that there is no independent locus standi for a workman when the union is involved in the process of collective bargaining. It has also to be noted that in KCP Ltd. 's case there was a recognised union and thirdly the distinguishing factor in the instant case is that the issue is to be adjudicated on merits before the Tribunal. Therefore, it has to be appreciated that the union espousing the cause of the workmen is not a registered union, there is no conciliation settlement between the management and the union and

that a reference is otherwise possible and permissible at the instance of the workmen. In Virudhachalam's case also there was a settlement and the question was whether an individual workman who is not a member of the union could claim the benefit of the settlement. At paragraph 9 it was held as follows:-

"The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus, settlements are the live wires under the Act for ensuring industrial peace and prosperity. Section 10(2) of the Act highlights this position by providing that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. Individual workman comes into the picture only in connection with a limited class of industrial disputes as indicated by Section 2A of the Act dealing with discharges, dismissals, retrenchment or otherwise termination of services of an individual workman. Save and except the aforesaid class of disputes, which an individual workman can raise, rest of the industrial disputes including disputes pertaining to illegal lock out, lay-off and lay-off compensation have to be filtered through the process of collective bargaining and they are disputes of general nature or class disputes wherein individual workman by himself has no say".

It was in the above context, the court held that "the necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the Union. The Union or those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal." It has to be seen that in the instant case the Union has no objection in the impleadment since it is not a recognised union and there is no conflict of rights or interests.

8. There being no dispute as to the maintainability of an industrial dispute at the instance of the individual workmen, there being no dispute on the part of the Tribunal to implead necessary parties since there is no quarrel that by such impleadment the scope of reference is enlarged, and there being no objection on the part of the union, there is no justification in not permitting the impleadment of the workmen along with the union.

9. In situations where during the pendency of an individual dispute at the instance of a trade union or a substantial number of workmen u/s 2(k) of the Act wherein dispute is one covered by Section 2A of the Act namely discharge, dismissal, retrenchment or termination of individual workman, where the affected individual workman either loses confidence in the unions or the group sponsoring their cause or the sponsoring union or group of workmen withdraws support to the workman, or in situations where the competence of the

sponsoring union or group of workmen is disputed or doubted, it is not necessary to close the reference. The Tribunal/Labour Court is well within its powers to permit the affected individual workmen to get themselves impleaded for reasons to be recorded in writing and continue the proceedings as if it is a reference u/s 2A of the Industrial Disputes Act.

In the instant case the Tribunal allowed the application for impleadment by the individual workmen since the dispute is one covered by Section 2A and since it was necessary in the circumstances where the competence of an unregistered union sponsoring the dispute was doubtful. The view taken by the Tribunal is perfectly proper, reasonable and justifiable. To take a contrary view in the circumstances would run counter to the very purpose of a welfare legislation, apart from being unreasonable and it would lead to multiplicity of proceedings. I do not find any merit in the Original Petition. It is accordingly dismissed.