
(1976) 03 CAL CK 0008
In the Calcutta High Court
Case No : Matter No. 437 of 1973

Gagalbhai Jute Mills

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-03-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2, 2A
West Bengal Shops and Establishments Act, 1963 — Section 2(2)

Citation : (1978) 1 ILR (Cal) 179

Hon'ble Judges : R.M. Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M. Datta, J.—This Rule was directed on the application of the Petitioner Gagalbhai Jute Mills Division of Mafatlal Gagalbhai and Company Pvt. Ltd., inter alia, against the Second Industrial Tribunal, West Bengal, calling upon the Respondents to show cause why a writ in the nature of mandamus, certiorari and prohibition should not be issued in respect of the order of the Second Industrial Tribunal dated March 18, 1972, An ad interim order was also passed restraining the Respondents from taking any step on the basis of the said order.

2. The facts shortly are that the Petitioner company has a jute mill under the name of Gagalbhai Jute Mills at Howrah. The Petitioner has an office at Himalaya House at No. 38 Chowringhee Road, Calcutta-16. The Respondent No. 4, one V.P. Kothari, was an employee in the office of the Petitioner at the said Himalaya House. On or about December 1, 1970, there was an altercation between Kothari and the Chief Executive Officer. This led to the loss of confidence in him by the company and his services were terminated with effect from December 2, 1970 with the offer of payment of one month's salary in lieu of notice.

3. The Petitioner's case is that the workman did not make any common cause with the cause of the Respondent No. 3 and as such, no industrial dispute was

raised and/or pursued by or on behalf of the workmen of the Petitioner company. The Petitioner's further case is that after the termination of his services the Respondent No. 4 Kodiari submitted a back dated pretended application for membership of a trade union named Commercial Employees' Union (Calcutta). The Petitioner believed that he was not validly enrolled as a member of the said union before the date of termination of his service by the Petitioner company. None of the 24 employees excepting Kothari was a member of the said union.

4. The Commercial Employees' Union (Calcutta) is a combination of employees employed in different commercial firms within Calcutta. The said union does not represent workmen of the industry as a whole to which this particular establishment appertains, i.e., jute industry. This Commercial Employees' Union (Calcutta) pretended to take up the cause of Kothari, made a representation before the Labour Directorate, Government of West Bengal and after futile conciliation proceedings the appropriate Government without applying its mind, by its Labour Department Order No. 1184-IR/IR/7L-6/72 dated March 8, 1972, referred an industrial dispute to the learned Second Industrial Tribunal, West Bengal and framed the following issue:

Whether the termination of service of Sri V.P. Kothari is justified? To what relief, if any, is he entitled?

5. The Petitioner filed the written statement justifying the order of termination of the service of Kothari. The Petitioner raised a preliminary objection about the right and/or locus standi of the said trade union to espouse the cause of V.P. Kothari and/or the right of the said union to represent the cause of the Respondent No. 4 before any authority. The Petitioner contended that as such the said reference was not maintainable and the Tribunal had no jurisdiction to adjudicate on the issue.

6. The said union, the Respondent No. 3 herein, purporting to act or to represent Kothari, also filed a written statement before the said Tribunal. Upon an application being made on behalf of the Petitioner the Tribunal heard the case on the said preliminary (sic) by the Petitioner and by its order dated April 18, 1975, held, inter alia, that the union had locus standi to represent the concerned workman and it was an industrial dispute and the Tribunal had jurisdiction to adjudicate on the reference. To set aside and/or to quash the said proceedings the Petitioner obtained the Rule nisi herein.

7. Mr. Dutt appearing on behalf of the Petitioner contends that there are two conflicting Division Bench judgments of this Court concerning the point in issue which was the subject-matter of the preliminary point raised before the Tribunal. The earlier decision is the case of Srinivas Fatehpuria Private Ltd. Vs. N.C. Chatterjee and Others, and the later one is the case of Air France Vs. Miss K. Kotval and Others, . Mr. Dutt contends that the Tribunal was not competent to rely on the later judgment by ignoring the earlier one and by doing so, it has exceeded its jurisdiction in deciding the question by making the following

observations:

It is true that in the case of *Air France v. Miss Kotval*, the earlier Division Bench of the Calcutta High Court as reported in AIR 1963 Cal 548 was not taken into consideration, but still then *Air France* case being a later decision of the same High Court, reliance, in my view, should be placed on it. Moreover, in my view, it has taken a broader view of the entire matter which is also supported by two decisions of the Hon"ble Supreme Court. That being the position, the union, in the present case, in my view, has sufficient locus standi to represent the concerned workman.

Considering the two cases which are said to be of conflicting nature. I am of the view that under the circumstances, it cannot be said that the decision in the later case conflicts with the decision of the earlier one. At the time the earlier decision was arrived at, by said Division Bench of this Court, there was no Supreme Court pronouncement on the point. Since then the Supreme Court pronouncements were made and following the same the later Division Bench decision was arrived at. Under those circumstances, I fail to see how the two cases could be said to conflict with each other. In view of the Supreme Court decisions, the principles have been well-settled thereby and as such the Tribunal was justified in following the later Division Bench decision which considered the said Supreme Court cases.

8. The only other point which has been agitated by Mr. Dutt is that the Commercial Employees" Union (Calcutta) the Respondent No. 3 herein does not represent the workmen of the industry as a whole to which the particular establishment of the Petitioner appertains, i.e. the jute industry. This union is a combination of employees employed in different commercial firms within Calcutta and as such, it cannot be said as a fairly representative body of the workmen engaged in jute industry.

9. It is contended on behalf of the Respondents that *Gagalbhai Jute Mills*" head office is a commercial establishment and cannot be called a jute industry. The head office of *Gagalbhai Jute Mills* has no union of its own. The workmen of the commercial establishments at Calcutta through their union, or Commercial Employees" Union (Calcutta), made common cause with the cause of the Respondent No. 4. This Commercial Employees" Union (Calcutta) is an omnibus union of employees of different commercial establishments at Calcutta. The approximate membership is about 4500 and they are employees of about 250 units of commercial establishments at Calcutta. It is contended that the employees of commercial establishments at Calcutta made the common cause of an employee of another commercial establishment in Calcutta and they have direct and substantial interest with the cause of Kothari. They had the community of interest in the cause of the Respondent No. 4, i.e. Kothari. Under the rules and constitution of the said Commercial Employees" Union (Calcutta), it is provided as follows:

The Union is a combination of employees employed in different commercial firms

within Calcutta and employees of the age of 15 years or more employed in different commercial firms under different employers as shall be eligible for admission as ordinary members of the union.

This would show that the union is an omnibus union, representative of the employees of the various commercial establishments at Calcutta. The object clause, item 3 of the rules and of the constitution of the union provides:

The Union shall strive to improve and ameliorate the conditions of the members and to safeguard their interest by negotiation with their employers and only in the last resort by strikers.

10. On behalf of the Commercial Employees" Union (Calcutta), the Respondent No. 3 herein, one Ajit Narayan Mishra, the assistant secretary of the said union, affirmed an affidavit on September 12, 1973 and used the same in opposition to the petition of the Petitioner Gagalbhai Jute Mills. According to him, the Respondent No. 4 Kothari was validly and rightly enrolled as a member of the union. His application for membership was dated April 16, 1970 and he paid the membership subscription since April 1970. He has denied that Kothari had submitted back dated application for membership. According to the deponent, Kothari became a member of the union prior to the date of the termination of his service. It was admitted by the deponent that Kothari was the only member of the said union of the employees of the Petitioner company. He also stated that Kohari was the only employee in the category of jute clerk in the Petitioner company and he was a member of the said union.

11. Mishra has further stated that the union is a combination of employees employed in different commercial firms within Calcutta. According to him, the said union is composed of workmen employed in different commercial establishments in Calcutta including the Petitioner company. The union represents the workmen of the industries as a whole, i.e. it represents employees of all commercial establishments at Calcutta as a class. According to him, the office at Himalaya House of the Petitioner company is a commercial establishment and a unit of the industry of commercial establishments at Calcutta as a whole and the office of the Petitioner company is not a unit of jute industry. The Petitioner company admitted this position that it is a commercial establishment before the Tribunal and never pleaded that it was a unit of jute industry in particular. According to Mishra, the order of the Tribunal was in accordance with law and in conformity with the provisions of the Constitution and with the principles of natural justice. Mishra has further stated that the employees of the smallest units of commercial establishments who cannot have their own independent union of individual establishment are eligible to be members of this union which has been formed to see the interest of all the employees of such establishments. That is to say, it is a union of the industry of commercial establishments at Calcutta and not of any individual commercial establishment. The Respondent No. 3 the Commercial Employees" Union (Calcutta) has been formed to see the interest of this particular industry, i.e. the

commercial establishments at Calcutta and not for any other particular type or class of industry or of any establishment situate outside Calcutta. It is contended that since the employees of the Petitioner company did not have any union of their own, this Commercial Employees' Union (Calcutta) had direct and substantial community of interest in the matter of employment, confirmation, condition of service etc.

12. On behalf of the State Government one Nalini Ranjan Sarkar, the assistant secretary, Labour Department, Government of West Bengal, affirmed an affidavit-in-opposition to the petition herein on September 17, 1973, whereby he has, inter alia, stated that there has been no proper demand for justice and in the absence of such a demand for justice and in the absence of any copy of the same being annexed to the petition as required under the Rules of this Court, this application is not maintainable.

13. Mr. Ghose, appearing on behalf of the State Government, contends that by Amendment Act XXXV of 1965, Section 2A has been inserted in the Industrial Disputes Act, 1947, whereby the question of dismissal from services of an individual workman shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. Mr. Ghose further contends that this specific provision could not be taken advantage of by the concerned workman Kothari, because at the material point of time this Section 2A of the Industrial Disputes Act was held to be ultra vires and was struck down by the decision of a Single Bench of this Court. Accordingly, Kothari had to take the help of the union to espouse his cause. Subsequently, however, by a Division Bench judgment of this Court this Section 2A of the Industrial Disputes Act has been held to be intra vires the Act, with the result that under the said provision the workman concerned could have himself validly raised the industrial dispute and in any event, Mr. Ghose contends that he is entitled to justify the decision of the Tribunal from this point of view also, now that the same is available to him.

14. In my opinion, this point should not be allowed to be judged from that point of view. Nobody raised the question about Section 2A before the Tribunal and the preliminary question has been decided not on that basis but on the basis as to whether the union could espouse the cause of this single workman even though the union was not a union of the same industry, viz. jute industry. Under those circumstances, the point raised by Mr. Ghose is untenable and I reject the same. Accordingly, the only point that remains to be decided is whether the Commercial Employees' Union (Calcutta) which represents the members of the commercial establishments in Calcutta as a whole, can espouse the cause of this workman Kothari in the facts and circumstances of this case.

15. Mr. Banerjee, appearing on behalf of the union, refers to the definition section of the West Bengal Shops and Establishments Act (W.B. XIII of 1963) where the expression "commercial establishment" has been defined u/s 2(2) of the said Act. The same reads as follows:

"Commercial establishment" means an advertising, commission, forwarding or commercial agency, or a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker's office or exchange and includes such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be commercial establishments, for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement.

On the basis of the said definition clause Mr. Banerjee contends that Gagalbhai Jute Mills had its head office at Himalaya House at No. 38 Chowringhee Road, Calcutta. It is a commercial establishment according to the definition given by the said Act of 1963.

16. Mr. Banerjee has also referred to Section 2(J) of the Industrial Disputes Act, 1947, where the expression "industry" has been defined as follows:

(j) Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, handicraft, or industrial occupation or avocation of workmen.

17. Reference has also been made to para. 4 of the affidavit of Ajit Narayan Mishra wherein it has been stated that the Petitioner company is a commercial establishment trading in various I items including raw jute, jute products, machinery and spare parts and items incidental thereto. In the affidavit-in-reply filed on behalf of the Petitioner the said averments have not been specifically dealt with save and ^except that there has been a general denial about the same. In para. 3 of the petition it has been stated that the Petitioner has for the purpose of effectively carrying on the business of buying and selling jute, jute fabrics and other fibrous materials more particularly in connection with the manufacturing process carried on in the said jute mills and export of their products established an office at Himalaya House, at No. 38 Chowringhee Road, Calcutta-16. It is also admitted in the petition that the Respondent Kothari at the material point of time, was employed in the office of the Petitioner at the said Himalaya House in Calcutta as clerk.

18. It is next contended by Mr. Banerjee that the Tribunal's finding is that Kothari became a member of the union from April 16, 1970. He was dismissed on December 2, 1970. According to the Tribunal, in any event and at least from December 23, 1970, Kothari became a member of this union. The reference herein was made by the State Government on March 18, 1972 and accordingly, it could not be said that Kothari was not a member of this union at the relevant point of time. Mr. Banerjee referred to the case of Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, where it has been held following the earlier Supreme Court decision in The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, that the test whether an individual dispute got converted into an industrial dispute depended

on whether at the date of the reference the dispute was taken up and supported by the union of workmen of the employer against whom the dispute was raised by an individual workman or by an appreciable number of workmen. The Supreme Court on that point also referred to its earlier decisions in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, and *Workmen of Indian Express (P) Ltd. Vs. The Management*, .

19. The Tribunal's findings are that the workmen of this company have no union of their own. The Commercial Employees' Union (Calcutta) which represents the concerned workman is an omnibus union of the commercial undertakings in Calcutta. This will appear from the union's constitution which has been exhibited before the Tribunal. Kothari is the only workman of Gagalbhai Jute Mills and is a member of the union and no other workman of the said industrial unit is a member of the said union. Evidence was led before the Tribunal in proving the membership of Kothari with the union and on such evidence the Tribunal came to the finding that his membership commenced from April 10, 1970 and in any event, he was a member at least with effect from December 23, 1970. Accordingly, the principles enunciated in the case of *Western India Match Company Ltd. (Supra)* applied because the reference was made on March 18, 1972 and before such date Kothari in any event became a member of the union. These are questions of facts and the Tribunal's decisions on such facts are based on materials on record and as such, they are not open to be reviewed by this Court in its writ jurisdiction.

20. The next point which remained to be considered is whether the union which represented Kothari had the representative capacity. In the later Division Bench case of *Air France v. Miss Kotval (Supra)* a Bench of this Court following the Supreme Court cases in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, and in the case of *Workmen of Indian Express (P) Ltd. Vs. The Management*, considered the point that the union which sponsored the case of an individual workman and did not have any other members from amongst the workmen in the same establishment but was composed of substantial number of workmen working in other units in the same industry to which the workman belonged, could be said to be a representative of the workmen in that industry and as such, it could sponsor the case of the industrial workman because it would be an industrial dispute relating to the workmen engaged in that industry in general. It was observed that the test was not whether the particular workman of one unit was affected but whether the workmen of the industry to which the workman belonged were interested in the adjudication of the dispute. I shall deal with this case more in detail while discussing the principles as laid down by the Supreme Court.

21. Following the said cases the Tribunal came to the finding f that the Commercial Employees' Union (Calcutta) had sufficient locus standi to represent the concerned workman. According to the evidence laid before it, the Tribunal found that the employees of 250 commercial units numbering about 4500 were

all members of the union. It also found that Gagalbhai Jute Mills was a commercial industry and it should be deemed to be a unit of the commercial industry in general.

22. The Tribunal also went into the question of fact as to whether the union had the authority to represent the cause of Kothari and came to the finding that since the union had espoused the cause of the concerned workman, prima facie this was proof of the fact that there was expression of collective will of a substantial or an appreciable number of workmen treating the cause of the dismissed workman as their own.

23. Let us now examine the principles enunciated by the Supreme Court and by the said Division Bench case the facts whereof on the material points are not very dissimilar to the facts involved in this case.

24. Mr. Dutt appearing on behalf of the Petitioner herein contends that all these cases before the Division Bench of this Court and before the Supreme Court have proceeded on the basis that the union which can espouse the cause of a workman must belong to the same industry to which the workman belonged. Here in this case the concerned industrial establishment is the jute industry and not a commercial industry. The Commercial Employees' Union (Calcutta) has no representative character in respect of this concerned workman. It is true that a unit of this jute industry is the head office of the said company with its address at Himalaya House at No. 38 Chowringhee Road, Calcutta and can be said to be a commercial unit, but even then it cannot be represented, by the union of commercial establishments because the industry concerned is a jute industry and not commercial industry.

25. In the case of *Workmen of Dharampal Premchand v. Dharampal Premchand* Supra (183) the Supreme Court construed Section 2(k) of the Industrial Disputes Act, 1947 and observed that in accordance with this definition, before any dispute raised by any person can be said to be an industrial dispute, it must be shown that it is connected with the employment or non-employment of that person and then observed as follows:

Literally construed, this definition may take within its sweep a dispute between a single workman and his employer, because the plural, in the context, will include the singular.

The Supreme Court then observed following its previous decisions that in order that a dispute between a single employee and his employer should be validly referred to 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. The Supreme Court on this point observed that a dispute between an employer and a single employee cannot by itself be treated as an industrial dispute unless it is sponsored or espoused by the union of workmen or by a number of workmen. His claim for such a reference must be supported either by the union to which he belongs or by a number of workmen. *Central Provinces Transport Services Ltd.*

Vs. Raghunath Gopal Patwardhan, and The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., .

26. In Dharampal's case Supra (186) the Supreme Court laid down the principle as to how the industrial disputes have to be adjudicated. The Supreme Court observes that in every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. It is also observed that in some cases the union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no union of their own and an appreciable number of such workmen had joined such other union before their dismissal.

27. In the case of Workmen of Indian Express Newspaper Pvt. Ltd. v. The Management of Indian Express Pvt. Ltd. Supra (judgment delivered on November 26, 1968) the Supreme Court had occasion to go into the question over again. That was a dispute relating to two workmen of the management and such dispute was referred for adjudication to the Tribunal at the instance of a union called Delhi Union of Working Journalists. There also the preliminary question was sought to be raised whether the dispute was an industrial dispute or an individual dispute. In this case also the Supreme Court reviewed its earlier decisions including the decision in Workmen of Dharampal Premchand v. Dharampal Premchand Supra and applied the principles laid down in Dharampal's case. In that case 31 out of 68 journalists of the Respondent company were members of the Delhi Union of Working Journalists at the relevant point of time. On that basis it was observed that such a number of membership would certainly confer on the union a representative character. The Supreme Court also took into consideration the fact that at the material time there was no union of working journalists employed by the Respondent company and accordingly, applied the principles laid down in Dharampal's case (5) and observed that the union could be said to have a representative character qua the working journalists employed in the Respondent company. Accordingly, the Supreme Court held in that case that the dispute was transformed into an industrial dispute as it was sponsored by the union which possessed the representative character vis-a-vis the working journalists in the employ of the Respondent company.

28. The next case decided by the Supreme Court on this point was Western India Match Company Ltd. v. Western India Match Company Workers' Union Supra (260) (judgment delivered on January 9, 1970). That was also a case of dispensation with the services of a single workman during his probationary period. The same point was taken, viz., that there could not be an industrial dispute as on the date of termination, the employee was not a member of the

union and that there was no espousal of his cause in such a manner as to convert an individual dispute into an industrial dispute. The Supreme Court observed:

The parties to the industrial dispute are obviously the parties to the reference and therefore, the dispute must be an industrial dispute between such parties. It follows, therefore, that though a dispute may initially be an individual dispute, the workmen may make that dispute as their own, that is to say, espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workman. This premise presupposes that though at the date when the cause of the dispute arises that dispute is an individual dispute, such a dispute can become an industrial dispute if it is espoused by the workmen or a substantial section of them after the cause of the dispute, e.g. dismissal, has taken place.... Further the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for, without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it.

29. In the light of the above principles laid down by the Supreme Court I shall now discuss the case of *Air France v. Miss K. Kotval and Ors.* Supra. This judgment was delivered by the Division Bench of this Court on May 20, 1969, i.e. after the decision of *Dharampal's case* Supra but before the decision of *Western India Match Company's case* Supra. That case related to the dismissal from service of Miss. Kotval serving under Air France. The dispute relating thereto was sponsored by the Aero-Employees' Union in which, no other employee of Air France was a member. The Tribunal held that the dispute was not an industrial dispute but an individual dispute. In an application under Article 226 of the Constitution the writ Court allowed the same and remanded the matter to the Tribunal for adjudication on merit. The matter was taken on appeal. It was held that though the union which sponsored the case of Miss. Kotval did not have as its members from amongst the workmen of Air France but was composed of a substantial number of workmen in other units in the same industry to which the workmen belonged it might be said to be the representatives of Miss, Kotval in that industry and as such it could sponsor her case and make it an industrial dispute. The Division Bench extensively quoted passages from the observations of the Supreme Court in the decision of the *Workmen of Indian Express Pvt. Ltd.* Supra(74) and made its observation as follows:

The substance of this observation is that though the union which sponsors the case of a workman does not belong to the same establishment, but is composed of a substantial number of workmen working in the industry to which the workman belongs, it may be said to be representative of the workers in that industry, in which case it can sponsor the case of the individual workman--the principle being that in that case it would be an industrial dispute relating to the

workmen engaged in that industry, in general. As I have stated earlier, the test is not whether the particular workmen of one unit are affected but whether the workmen of the industry to which the workman belongs are interested in the adjudication of the dispute. On the basis of the above principle the Division Bench examined the facts of that case and considered the question whether the Aero-Employees" Union was representative of the workmen engaged in the industry of air transport.

30. From the records it could not come to the Ending that the said Aero-Employees" Union was a union of workmen who were employed in a similar industry and the Bench considered that without further evidence on the said fact it was not in a position to pronounce any judgment and as such sent the same back to the Court below for a fresh determination of the said question as formulated therein with liberty to the parties concerned including the union to file fresh affidavit touching the said point as to the composition of Aero-Employees" Union in question and as to whether in view of such decision it could be said to be fairly representative of the workmen engaged in the Air transport industry. With the said observation and directions the appeal was allowed and the judgment of the Court below was set aside and the case was remanded to the said Court for fresh determination according to law after coming to a finding on the question mentioned above.

31. To my mind, the interpretation given by the Division Bench in that case in respect of the principles enunciated by the Supreme Court, as set out above, has to be applied to this, viz., "whether the head office of Gagalbhai Jute Mills is a commercial industry. If that would be so, the Commercial Employees" Union (Calcutta) would be a union of workmen who would be employees in a similar industry.

32. Section 2(j) of the Industrial Disputes Act (sic) an "industry" as set out above. According to the said definition, any business can be called an industry and as such, it cannot be said that the concerned industry must relate to an industry like the jute industry or the paper industry or the textile industry and so on. The head office of Gagalbhai Jute Mills at 38 Chowringhee Road, Calcutta, can surely be described as a commercial unit of this jute mill. The concerned workman is an employee of this commercial unit of Gagalbhai jute Mills. He has no direct concern with this jute mill. He is a jute clerk and all throughout he is engaged in its head office. When it is observed that Kothari has no direct concern with the jute mill, what is meant is that he would hardly know the workers of the Gagalbhai Jute Mills and vice versa the workers of the Gagalbhai Jute Mills would hardly be expected to know him so as to make a common cause with him in respect of his dispute with the employer. Kothari's position is that of a clerk in a commercial firm. The workmen of the other commercial firms or establishments of the said business locality of Calcutta, where the other commercial establishments are located, will surely be more interested to make a common case with his cause because they are expected to have a community of interest

with him. These workmen, though belonging to the different industrial establishments, are, so to say, not concerned primarily with their industries like jute or textile or paper or sugar. They are in common with each other as workmen or employees of different commercial establishments. The Tribunal found and it is an admitted fact, that about 250 such commercial establishments are concerned with this union. The members thereof have no special identities as jute employees or textile employees and so on, but they are mostly office employees of those commercial establishments which might have their factories outside Calcutta or around it dealing with jute or-textile or sugar and so on. As for Gagalbhai Jute Mills, it can be said that its Calcutta office and the workmen employed there for the purpose of forming an union belong to the group of various commercial establishments of the said area in Calcutta. This is like one of the many business houses employing workmen to run their respective businesses. The workmen of those business establishments, it would seem, are directly, substantially and indeed, essentially interested in the employment, dismissal or termination of service of the concerned workman because by reason of the nature of their employment they have bound themselves by a community of interest.

33. The Tribunal has arrived at the said decision and I see no reason as to why I should hold that the Tribunal has acted beyond its jurisdiction in applying the principles of law correctly, From the evidence on record the Tribunal came to the said finding and as such, it must be held that the said Commercial Employees" Union (Calcutta) is truly and for all practical purposes a representative of the workmen so as to transform the individual dispute into an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act and is entitled to espouse the cause of the said workman before the Tribunal. In any event, the point has become more or less academic because even if it is held that the Tribunal went wrong in applying the principles of law to the facts of this case before it and its finding is set aside, then the individual workman concerned, viz., Kothari would be in a position to raise the dispute himself u/s 2A of the Industrial Disputes Act which is available to him now and make it an industrial dispute.

34. In my opinion, the Tribunal is quite justified in coming to that finding on the basis of the materials placed before it. It has applied the law correctly and the finding in respect therein should not be disturbed by this Court. The Rule is, accordingly, discharged and the application is dismissed with costs to the union.