
(1978) 08 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 388 of 78

Hindustan Copper Ltd.

APPELLANT

Vs

The Central Industrial Tribunal and Others

RESPONDENT

Date of Decision : 03-08-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 2, 33, 33A

Citation : (1978) 11 WLN 707

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.M. Kasliwal, J.—The petitioner is a company registered under the Indian Companies Act and is a undertaking if the Government of India & carries on business of mining of copper ore and its processing far production of copper metal. It has employed a large number of labourers The Labourers have formed a union known as Rashtriya Khetri Tamba Mazdur Sangh. The respondent No 2 was working as a helper (Mechanical) in one of the establishment of the petitioner. As the respondent No. 2 absented from his duties without obtaining prior permission for leave he was warned on several occasions and entries to this effect were also entered in service roll It is further alleged in the writ petition that the respondent No. 2 not only remain-id absent from his duties without leave on various dates between 30th March, 1974, to 5th April, 1975 but on 5th April, 1975, he entered the office room of the Personnel Officer at the Central Office arid mis-behaved with him and also threatened him with dire consequences. This constituted a serious misconduct and serious dereliction of duties under the Certified Standing Orders of the petitioner company. There upon the respondent No. 2 was served with a show cause notice vide Annexure 1 dated 5-4-1975. The respondent No. 2 failed to submit any explanation, consequently an inquiry was initiated. The respondent No. 2 participated in the inquiry, cross-examined the witnesses produced on behalf of the petitioner but as

a latter stage absented himself. The inquiry officer found the respondent No. 2 guilty of misconduct and consequently the petitioner company dismissed the respondent No. 2 by order Annexure 2 dated 5th July, 1976.

2. The respondent filed a complaint u/s 33A of the Industrial Disputes Act 1947, (hereinafter referred to as the Act") before the Central Industrial Tribunal, Jaipur, on 14th October, 1976. The case as put forth by the respondent in his complaint was that he was a workman concerned in cast No CIT/12/75 within the meaning of Section 33(2)(b) of the Act which was pending before the Tribunal and as such he could not be dismissed unless the petitioner had obtained approval for the same from the Tribunal. The petitioner submitted a detailed reply to the complaint filed by the respondent & also took a preliminary objection about the maintainability of the complaint on the ground that the dispute of the petitioner with the respondent was in no way connected either directly or indirectly with the dispute under case No. CIT/12/75 As the dispute in case No CIT/12/75 was in connection with four of its employees in their individual capacity, the respondent was not a workman concerted and the mere fact of his being a member of the Union which had sponsored and conducted the dispute before the Tribunal on behalf of the four member employees did not give a right to the respondent to file a complaint u/s 33A of the Act The learned Tribunal, respondent No. 1, rejected the Preliminary objection raised by the petitioner placing reliance on New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, vide its order dated 15th March, 1978 Annexure 7. The petitioner has filed this writ petition challenging the above order of the Tribunal dated 15th March, 1978.

3. Learned Counsel for the petitioner has vehemently contended that the Tribunal has committed a serious error of law in holding the respondent to be a "workman concerned" in the facts and circumstance of this case. According" to the learned Counsel the Supreme Court itself in a latter decision reported in Digwadih Colliery & Ramji Singh 1964 II LLJ 143, have watered down the earlier case. He has further placed reliance on The Pali Electricity Co. Ltd. v Industrial Tribunal RLW 1959 143, Cement Cos. Ltd. Lakheri v. A.N. Koul Industrial Tribunal Rajasthan Jaipur RLW 1959 650 Bhagendra Prasad Patra v. DCMSMS Koraput and Anr. 1976 Lab. IC 1260 , Visalakshi Mills Ltd. Vs. Labour Court and Another, Chodevaram Cooperative Agricultural & Industrial Society Ltd. v. R.V.S.N. Jagepathi Raju and Anr. 1977 Lab. I.C. 1943 , Municipalities S. Singareni Collieries Co. Ltd., Kothagudem Vs. The Industrial Tribunal, Andhra Pradesh, Hyderabad and Another, , and Andhra Pradesh State Road Transport Corporation Hyderabad v. N.R.R. Varma and Anr. 1975 Lab IC 1057. On the basis of the above rulings the learned Counsel for the petitioner contends that the burden to prove that the respondent was a "workman concerned" lay on him and as the respondent has miserably failed to prove that he was in any manner what soever connected or interested or involved in the case No. CIT/12/75 he cannot be treated as a "workman concerned," and therefore, he has no right to file any complaint u/s 33A of the Act He has further contended that only allegation in this regard made by the respondent is contained in para D of his complaint filed

before the Tribunal vide Annex 3 dated 14th October, 1976. The language used by the respondent in this complaint is reproduced as under:

Those employees numbering 4, concerned with that industrial dispute were also victimised by the opposite parties and in the same manner out of personal vindicta The complainant is also interested in the out come of that reference case as common points are involved as well as the cases of those employees have also been sponsored by the Rashtrya Khetri Tamba Mazdoor Sangh of which the applicant is also an active member.

The petitioner had filed a reply to the above complaint before the Tribunal vide Annexure 4 dated 20th December, 1976. In para 8 of this reply the petitioner had taken the following stand:

That, it is reiterated that the complainant is not a concerned workman in the reference case pending before this Hon"ble Tribunal in case No. CIT/12/75. The said reference was in relation to the dismissal of four workmen of the opposite party for their notorious activities and the complainant is not in any way concerned with the said dispute. Further, his other statements in para 1-D are strongly objected.

The learned Counsel for the petitioner further submit that the incident of the basis of which action has been taken against the for other employees was dated 29th May, 1975, for which they were dismissed vide Annexure 5 dated 31st May, 1975 It has no where been mentioned in the complaint filed by the respondent on 14th October, 1975 that the respondent was also one of the persons, who had joined the crowd collected by the four workman on 29th May, 1975 or made any inflammatory speeches against the officers of the company or joined the other workers beating the officers of the company. Thus the respondent has neither alleged nor proved that he was in any manner connected or interested with the dispute raised in case No. CIT/12/75 The respondent has only made a vague and bald allegation in para D of his complaint that he was also victimised by the opposite parties and in the manner out of personal vindicate Learned Counsel has contended that the respondent has miserably failed to prove as to what common points are involved in his case with those of the four other employee? The learned Tribunal also has not arrived at the conclusion that the case of the respondent was of victimization by the opposite parties and in the manner out of personal vindicta as that of the four employees concerned in the case No. CIT/12/75. According to the learned Counsel, the learned Tribunal has only held the respondent to be workman concerned in the dispute on the ground that the respondent being a member of the union which had sponsored and spooned the cage of the four other employees, all the members of that union became the workmen concerned in that dispute. This view, according to the learned Counsel, is not at all supported by the latter decisions of the" Hon"ble Supreme Court and other High Courts.

4. On the other hand, the learned Counsel appearing, on behalf of the

respondent No. 2 has supported the judgment of the learned Tribunal Annexure 7 dated 15th March, 1978. He has placed strong reliance on *Shalimar Paints Ltd. v. Third Industrial Tribunal* 1974 Lab. IC 213, between *Ehaskaran Nair v. Management, Premir Tyres Ltd. and Anr.* 1976 (32) FLR 329, and *Cane Manager, New India Sugar Mills Ltd. Vs. Krishna Ballabh Jha and Others*, Learned counsel, vehemently contended that the observations of their Lordship of the Supreme Court in *New India Motors (P) Ltd.*'s case (supra) still applied with full force and the case of the respondent is fully covered in the dictum laid down by their Lordships in the said case. According to the learned Counsel there is no subsequent decision of Hon'ble Supreme Court changing its view taken in *New India Motors (P) Ltd.*'s case (supra). The workman concerned has been given a wider expression and should not be limited to the workman directly and actually concerned in such dispute. The learned Tribunal has not recorded any evidence so far and has decided the preliminary objection as a mere question of law. It is only after the recording of evidence that the question about the victimisation by the opposite party lies but of personal vindicta can be decided-The learned Counsel for the respondent, therefore, submits that there was an averment in the complaint filed by the respondent that he was interested in the outcome of the result of the case No. CIT/12/75 and he would prove the sole allegation by leading evidence. The petitioner Company is not put to any loss or disadvantage even if the complaint filed by the respondent is entertained by the Tribunal, in as much as the petitioner would be entitled to satisfy the Tribunal on merits that the order of dismissal passed by it against the respondent was proper on merits.

5. I have given my careful consideration to the arguments advanced by the learned Counsel for both the parties. In *New India Motors (P) Ltd.*'s case their Lordships had clearly come to the conclusion on the basis of material placed on record that K.T. Morris respondent had supported the case of the 7 apprentices and that provoked the employer *New India Motors (P) Ltd.* to take the step of terminating his services. The following observations in the above Case clearly fortify the above result:

On the other hand, the evidence of the respondent clearly shows that he supported the case of the 7 apprentices and that provoked the appellant to take the step of terminating his services. The process of finding fault with his work appears to have commenced after the appellant disapproved of the respondent's conduct in that behalf. We are, therefore, satisfied that the Tribunal was right in coming to the conclusion that the dismissal of the respondent is not supported on any reasonable ground, and in fact is due to the appellant's indignation at the conduct of the respondent in the main industrial dispute between the appellant and its 7 employees. If that be the true position the industrial tribunal was justified in treating the dismissal of the respondent as mala fide.

No doubt their Lordships observed as under:

Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such disputes must be workmen

directly or immediately concerned in the said disputes. We do not see any justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out this construction is harmonious with the definition prescribed by Section 2(a) and with the provisions contained in Section 18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute.

But that does not mean that raising or sponsoring a dispute by the Union will be sine qua non for holding that every member of such union will be a workman concerned for any matter whatsoever even if it had no semblance of any connection or interest with the dispute raised by the Union. It would be necessary for the workman to show as to how he is concerned with the earlier dispute raised by the Union and pending before the Labour Court or Tribunal for determination. If the contention raised by the learned Counsel for the respondent is to be accepted, the result would be, that in any and every kind of dispute raised by the Union of any worker, every member of such union will become a workman concerned in the dispute and the employer will not be able to take any action without the prior permission or approval of the court or tribunal, concerned. It is necessary for the workman who wants "to come within the category of workman concerned in such dispute to prove that he is interested or has connection with the dispute already pending for determination. If the dispute raised or sponsored by the union may be of the kind like a demand of bonus, or salary which might be affecting the members of the union as a whole, it can be said that every member of the union is a workman concerned in a dispute but where the dispute raised or sponsored by the union on behalf of the individual workman relating to an incident concerning the act of that workman individually it cannot be said that every member of such union will be a workman concerned in the dispute. To illustrate an individual workman is found guilty of committing theft and is dismissed by the employer and such dispute may be sponsored by the union by raising an industrial dispute and the same may be pending before the court or tribunal for determination, another workman though being a member of the same union may be found guilty of committing embezzlement or misbehaving with an officer of the employer and which obviously has no connection with the earlier dispute cannot in my humble opinion, bring such person within the meaning of a workman concerned in a dispute" in relation to

the dispute raised sponsored by the Union. Their Lordships of the Supreme Court in Digwadih Colliery's case (supra) have clearly observed:

Even if the broader construction of Section 33(2) is adopted it is necessary to inquire what was the subject matter of reference No. 60/1959.

In the above case in the application the respondent had made no averment about the nature of the said dispute and as such their Lordships had held that the Tribunal was clearly in error in holding that the broad construction of Section 33(2) automatically led to the conclusion that the respondent was the workman concerned and could therefore claim the protection of Section 33(2).

6. I am fortified in my above opinion by the cases relied upon by (he learned Counsel for the petitioner.

7. Coming to the facts of the present case the dispute raised in case No. CIT/12/75 related to an incident dated 29th May, 1975, concerning the four workmen and the order of dismissal passed on 31st May, 1975, by the employer. The respondent has nowhere in the complaint filed by him u/s 33A, averred that he was also present at the time of the incident which occurred on 29th May, 1975 or that he had appeared in evidence in the case concerning the four workmen. The proceedings against him had been initiated much earlier that is on 5th April, 1975 and relates to the charge of remaining absent without leave and for misbehaving with an officer of the employer. Thus there are no common points involved in the two cases and the respondent cannot be said to be interested at all in the outcome of the result of the Case No. CIT/12/75 There is only a bald allegation that the employees number in four concerned with that industrial dispute were also victimised by the opposite party and in such a manner out of personal vindicta, has dismissed the four employees and the respondent. The learned tribunal has also not given this finding in favour of the respondent The only ground on which the learned tribunal has held the respondent to be a workman concerned in dispute, is on the basis that he is a member of the same union Under the circumstances, in my view, the order of the learned Central Industrial Tribunal Jaipur dated 15th March, 1978, is not correct.

8. In the result, this writ petition is allowed, the order of the Central Industrial Tribunal, Jaipur, in complaint case No. CIT-2/76 dated 15th March, 1978, is quashed. In the circumstances of the case the parties shall bear their own costs.