

(2003) 04 CAL CK 0059
In the Calcutta High Court
Case No : Writ Petition No. 471 of 2003

Humboldt Wedag India (P) Ltd.	Vs	APPELLANT
The Eighth Industrial Tribunal and Others		RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2A

Citation : (2004) 1 CALLT 172 : (2004) 1 LLJ 315

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Tapas Banerjee and S.R. Saha, for the Appellant; S. Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

A. Lala, J.—This writ petition arising out of order No. 39 dated 28th January 2003 passed by the learned Judge, Eighth Industrial Tribunal, Calcutta.

2. The issue is whether the single workman can represent his case individually even after initiation of the proceeding by employees' registered union.

3. Dr. Tapas Banerjee, learned senior counsel, appearing on behalf of the employer company (hereinafter called as the "management") contended that whenever a dispute raised by a union on behalf of a workman such dispute is to be construed as "collective dispute". Therefore, the individual workman loses his locus standi as soon as he represents his case before the Tribunal through the union. He cited a judgment reported in Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, to establish his case wherefrom I find a three Judges Bench of the Supreme Court held that 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. Dr. Banerjee has drawn

my attention to the order of reference to establish that the same was made with the dispute referred in between the management and the workman through the employees" registered union.

4. He further contended that in 1977(1) CHN 328 (Steel Authority of India Ltd. v. Hindustan Steel Employees" Union and Ors.) where a Division Bench of this High Court held that in making an order of reference the appropriate Government merely sees whether an industrial dispute has come into existence or not. If the industrial dispute has come into existence and the espousal of the cause is made by the other workman or the Union of workmen is becomes wholly irrelevant. The Court has to see the substance and not the form of the order.

5. Mr. Bikash Ranjan Bhattacharjee, learned senior counsel appearing for the respondent employee (hereinafter called as "the workman") has drawn my attention to Section 2A of the Industrial Disputes Act, 1947 and submitted that by insertion of such section by the Act 35 of 1965 with effect from 1st January, 1965 an individual workman is to be deemed to be a party to the industrial dispute in case of dismissal etc.

6. Upon plain reading of such Section 2A, I find that a liberty has been given to an individual workman to raise an industrial dispute notwithstanding that no other workman nor the union of the workmen is a party to the dispute. Such non-obstante clause does not speak at what stage the same will be applicable. Whether the same will be applicable at the stage of making any reference or at the stage after making the reference or when the proceeding is pending before any Court or Tribunal. Therefore, it can be construed that if the workman chooses to appear alone and contests the clause without being supported by any other workman or the union the industrial dispute can be proceeded with. In other words if other workmen or union supported the case of the workman, subsequently withdraw or lift their support and the workman proceeds of his own even then such industrial dispute can not be said to be non est in the eye of law. Since the question of giving deeming effect of an industrial dispute to a workman is given u/s 2A of the Act such deeming provision will be applicable from the inception up to the end of the dispute irrespective of the support of the other workmen or the union being parties to such dispute. There is a reason behind making such observation. Industrial dispute is a social piece of legislation. The management and the workmen cannot have equal bargaining power to find out the clause in the industrial dispute. All the workmen are not educated enough to espouse their cause. Similarly they are financially not so solvent that they will be able to proceed with their cause individually. There, the question of representation by the Union or group of workmen arises. But modernisation gives various good; as well as evil impressions in the mind of the people about the activities of both on the part of the management and the Union and this is the root cause for the law makers to introduce Section 2A giving right to individual workman to espouse his or her cause. Secondly, the vital question is whether the dismissal of an individual workman can be construed as "Collective

dispute" of the workmen or union. My answer is "no". "Collective dispute" cannot be construed as collection of people being more than one in number but the dispute having single impact upon more than one workman or upon the union at large. In other words, if the cause of action is in personem, be it represented by the workmen or the Union the same cannot be said to be a "collective dispute". The "collective dispute" is when the impact of such dispute is applicable in rem. Thus, as because union has proceeded with an individual cause of a workman, the same cannot be said to be a "collective dispute". Even in Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, three Judges Bench held that when the dispute is of an individual workman taken up by the Union but affects the workmen in general the individual workman cannot ordinarily claim to be heard independently of the union. Alternatively a workman can fight independently for his cause when the same is not affecting workmen in general. The word "ordinarily" speaks that a workman's not exclusively barred from representing his case.

7. Last but not the least, such judgment was delivered prior to the amendment of Industrial Disputes Act in the year 1965. Therefore, the right of the individual workman to proceed with industrial dispute, which was not available therein, is now established by the statute itself. That is why the Division Bench of our High Court in 1997(1) CHN 328 (supra) has taken into account the scope and ambit of Section 2A along with other Sections in considering the right of representation of a workman by holding the only factor before the Court or Tribunal, i.e. whether industrial dispute exists or not.

8. One other incidental fact which has been pointed out is also recorded hereunder that the workman himself is represented the case as General Secretary of the Union. Hence, the position of representation of the case either by the workman himself or by the Union is factually inseparable in nature. This is also the factual distinguishable feature in between this case and Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, whereunder the workman refused to get assistance of the Secretary of the Union and wanted a man of his choice.

9. Coming back to the order impugned. I find that the learned Judge of the Tribunal has considered not only the question of facts but also the question of law. I do not find any infirmity therein. Therefore, taking into totality of the matter, I am of the view that there is no question of entertaining the writ petition at all. The writ petition is liable to be dismissed at the threshold.

10. Accordingly, the writ petition stands dismissed. However, no order is passed as to costs.

Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.