
(2003) 04 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16266 of 2000

Indo National Limited

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 3 ALD 691 : (2003) 4 ALT 167

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : Vedula Srinivas, for the Appellant; Government Pleader for Finance and Planning, for the Respondent

Judgement

S. Anand Reddy, J.—This writ petition is filed by the company praying for issue of writ of Certiorari or any other appropriate writ or order quashing the award of the first respondent-Labour Court, Guntur in I.D.No. 39 of 1991 dated 12-5-2000 and to pass such other and further orders as the Court deems fit.

2. The petitioner is a company registered under the Companies Act carrying on its operations at Tada in Nellore District. As on the relevant date, the petitioner-company was engaging 308 employees in its factory and has got good industrial relations and was observing all the provisions of the Labour Laws. During the year 1990, there were two registered unions in the petitioner factory, one belongs to I.N.T.U.C., which was a majority union and the other belongs to D.M.S., which was a minority union with nominal membership. The minority union started instigating the workmen to slow down the production in the factory by misleading them that the salaries and perks are inadequate. As a result, the production fell down from August, 1990 and notices were exhibited by the management in September and October, 1990 requesting the employees to improve the production level. Notice dated 3-10-1990 was issued calling for review meeting on 10-10-1990 to discuss the shortfall in production. A workman by name K. Babu, working in the finishing section and claiming to be the

President of newly formed Forum of both the unions, planned to abort the review meeting and he caught hold of Mr. Nageswar Rao, the Deputy General Manager of the factory on 9-10-1990 in the guise of enquiring about the Welfare Fund loan. The Deputy General Manager asked Mr. Babu to meet him in the office, as the shop floor is not the place to discuss such issues. Mr. Babu unnecessarily started shouting and using singular language against the Deputy General Manager though the Manager tried to convince Mr. Babu but he refused to come down to normalcy. Mr. Babu started spreading false information to the workmen of the factory that the Deputy General Manager manhandled him. Mr. Babu also threatened that he would commit suicide unless the workmen stop the production. Ultimately, the production came to halt on 9-10-1990. The management informed police about the disturbed situation in the factory and the suicide threat of Mr. Babu whereupon the Sub-Inspector of Police visited the factory and enquired with the workmen. The Sub-Inspector of Police and his constables were convinced that there was no truth in the version of Mr. Babu and that there was no highhandedness on the part of the Deputy General Manager. The workmen of the factory have decided to resume duty and were asked by the management to give assurance that they would restore the normal production. Without any valid reason the workmen continued the strike on the instigation of Mr. Babu and it continued even on the next day. Notices put up by the management did not yield any positive result. There was squatting by the workmen on 10-10-1990 in front of the office building and tense situation was prevailing in the factory. The supervisory staff expressed apprehension of happening of any untoward incident and consequently on 11-10-1990 the management withdrew supervisory staff and office staff from work. As there was deteriorated situation of law and order in the factory and as there was tension prevailing on account of false news spread by Mr. Babu, the management has decided to dismiss him and accordingly he was dismissed vide order dated 11-10-1990. The dismissal order has given in detail showing cogent reasons for the action taken by the management and it was also mentioned that conducting of enquiry cannot be done in the prevailing situation. Another workman by name Mr. Subba Reddy met the Deputy General Manager on 9-10-1990 to tender apology on behalf of the workman-Mr. Babu but after coming out of the Chamber of the Deputy General Manager he also participated in the campaign of Mr. Babu and he also started spreading false news to the workmen in support of Mr. Babu and he instigated them to stop work. Therefore he was also dismissed on 13-10-1990 by the management by dispensing with enquiry and detailed order of dismissal was passed.

3. The workers of the factory represented on 12-10-1990 to the Conciliation Officer about the prevailing dispute. The Conciliation Officer initiated Joint meetings before admitting the dispute in conciliation. In the meanwhile, the local police officials tried to mediate between the management and the striking workmen. A representative body of the workmen was formed and they held talks with the management and the talks were fruitful and settlement was arrived

between the parties which clearly stated that the Deputy General Manager did not misbehave with Babu and the workmen will not espouse/support the cause of dismissed workmen. The management also suspended some more workmen like D. Guruswamy Gowd and T.Subba Raju as they were instigating workmen. Joint meetings were conducted by the management and the dispute was admitted in conciliation on 20-10-1990. Settlement dated 7-10-1990 u/s 18(1) of the Industrial Disputes Act (for short "the Act") was filed before the Conciliation Officer wherein the workmen of the factory have agreed not to pursue the dispute of the dismissed workmen.

4. However, five workmen have forced the Conciliation Officer to continue the conciliation proceedings and to send failure report. Accordingly, he has sent failure report to the Government on 20-11-1990. Thereafter, the Government issued G.O. Rt. No. 159 dated 18-9-1991 referring the dispute to the first respondent-Labour Court for adjudication u/s 10(1)(c) of the Act. The said dispute was numbered as I.D. No. 39 of 1991 before the first respondent. Before the first respondent, only five workmen, who represented before the Conciliation Officer, filed the statement but not by the dismissed workmen or by the union. Thereafter the Tribunal recorded evidence. During the course of evidence it is only the management, which led the evidence oral and documentary. But on behalf of the workmen except filing certain notices and orders issued by the management no oral evidence was adduced. Even the dismissed workmen did not go into the witness box. But however the Tribunal, after considering the material on record, held that the dismissal was not legal and valid and therefore ordered reinstatement with full back wages and continuity of service. Aggrieved by that, the management has come up with the present writ petition.

5. Mr. V. Sreenivas, learned Counsel for the petitioner-management contended that the cause of dismissal of two of the employees was not espoused or supported either by the union or by any substantial number of workmen except by five of the workmen. Therefore, the initiation or continuation of the conciliation proceedings as well as reference to the first respondent and the adjudication by the first respondent is clearly illegal and without Jurisdiction and is liable to be quashed on that ground itself. The learned Counsel contended that in order to treat the dispute as an industrial dispute, even if it is related to an individual workman, unless it is espoused by the union of the workmen of the establishment or by substantial number of workmen the same could not be treated as an industrial dispute in terms of Section 10(1) of the Act and therefore the entire proceedings are liable to be quashed. The learned Counsel contended that though such issue was not raised either before the conciliation officer, the Government or before the first respondent-the Tribunal, still as the said issue goes to the root of the matter such issue can be raised for the first time in the present writ petition. Further, according to the learned Counsel, there is no dispute as to the facts and the number of workmen who espoused the cause of the dismissed workmen. The learned Counsel contended that the cause of the two dismissed workmen was taken up only by five workmen, who claim to have

formed as an action committee and the support of such five workmen would not satisfy the requirement to treat the dispute as an industrial dispute. The learned Counsel contended that it was always open to the dismissed workmen to raise an industrial dispute in terms of Section 2-A of the Act but such an industrial dispute was not raised both before the first respondent in terms of Section 2-A. Therefore, the impugned award of the first respondent-Labour Court is liable to be quashed.

6. In support of his contention the learned Counsel relied upon the decisions reported in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*,

Vazir Sultan Tobacco Company v. State of Andhra Pradesh, 1964 (2) LLJ 622, *Metro Goldwyn Mayor (India) Limited v. Its Workmen* 1964 II LLJ 287, *National Organisation of Bank Workers" Federation of Trade Unions Vs. Union of India and others*, and *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, .

7. The learned Counsel also referred to the conciliation of the award on merits and contended that entire evidence was adduced only by the management and no evidence was at all adduced on behalf of the workmen either by the dismissed workmen or by the five workmen who formed as an action committee and in the absence of any evidence on behalf of the workmen the Labour Court was not justified in deciding the issue against the management. The learned Counsel for the petitioner-company further contended that as to the issue that five workers have espoused the cause of the dismissed workmen was specifically raised in the affidavit by the petitioner management and it is also stated that the union which represented the workmen entered into settlement which was even filed before the Conciliation Officer in terms of Section 18(1) of the Act and such settlement as even specifically incorporated the terms agreed by with the union that it would not espouse the cause of dismissed workmen and therefore it is not correct to state that there is no union at the relevant point of time. Further, the dispute espoused by five of the workmen stated to be members of the action committee cannot represent legally and no such dispute could be referred u/s 10(1)(c) of the Act Though such grounds were specifically raised and though a counter has been filed on behalf of the second respondent-workmen the said allegations were not disputed in the counter which was even sworn in by one of the dismissed workmen and the fact that the cause of dismissal of the two workmen was espoused by only five workmen is not in dispute. Therefore, it should be inferred that the dispute was espoused or supported by only five workmen and not by either union or substantial number of workmen.

8. Sri P. Raghavender Reddy, learned Counsel appearing for the dismissed workmen, on the other hand, supported the award of the Labour Court. But the said Counsel is not holding Vakalat of any of the Respondents but is holding Vakalat of the two dismissed workmen who are not impleaded as parties in this

writ petition. Therefore, this Court declines to hear him and proceeded to decide the matter on merits.

9. From the rival contentions, the issue to be considered is whether there is valid industrial dispute raised and referred for adjudication to the first respondent-Labour Court and the award passed by it, is just and valid?

10. It is not in dispute that the petitioner-management dismissed two of the workmen for certain alleged misconduct, the details of which may not be relevant for this writ petition. Thereafter there were conciliation proceedings between the union of the workmen of the petitioner-establishment and the management and ultimately there was a settlement which was filed in terms of Section 18(1) of the Act that the union would not take up or espouse the cause of the dismissed workmen. However, it appears five of the workmen stated to be the members of the action committee of the workmen of Indo National Limited represented before the Conciliation Officer with reference to the dismissal of the two of the workmen. The Conciliation Officer reported the failure to the Government and thereafter reference was made to the Government u/s 10(1)(c) of the Act. The said reference was registered as industrial dispute No. 39 of 1991. The first respondent-Labour Court adjudicated the said industrial dispute and passed an award.

11. The main contention that is advanced before this Court is as to the validity of the reference itself on the ground that it was not supported or espoused by the union or by substantial number of workmen as is required. It is not in dispute that there are about 308 workmen as on the relevant date working in the petitioner company. According to the petitioner, the alleged industrial dispute is supported by only five workmen and the same would not comply the legal requirement and therefore the reference of the industrial dispute itself is illegal and liable to be quashed on that ground itself.

12. In support of his contentions, the learned Counsel relied upon the decision of the Apex Court in the case of Newspapers Limited v. State Industrial Tribunal (supra). In that case a lino typist was dismissed from service by the appellant-company on the allegations of incompetence. But, however, his case was not taken up by any of the Unions of workmen employed in similar or allied trades, but was taken up by the U.P. Working Journalists Union, Lucknow, with which he had no connection whatsoever. The Conciliation Board referred the matter to the Government as to the failure of conciliation. Thereupon the U.P. Government made a reference to the Industrial Tribunal. The Tribunal, after adjudicating the issues raised, decided the matter in favour of the workman and ordered reinstatement without break in continuity of service and also ordered for payment of his wages for the period during which he remained dismissed. On appeal to the Labour Appellate Tribunal, the order was confirmed. The appellant company, thus, moved the Allahabad High Court under Article 226 of the Constitution. But the said writ petition was also dismissed. Therefore, the matter was farther taken up before the Apex Court. The Apex Court considered the issue

whether the dispute between the employer and a single workman falls within the definition of "industrial dispute" as used in the U.P. Industrial Disputes Act. The terms in the said Act are almost identical to that of the Central Act. After referring to the relevant Rules, it was held that the use of the word "workmen" and the "workman" in the above Rule is indicative of the intention of the Act being applicable to collective disputes and not to individual ones, and this is fortified by the finality and the binding effect to awards by Rule 28 and more specially by Section 18 of the Central Act, which makes awards binding not only on the individuals present or represented but on all the workmen employed in the establishment and even on future entrants. The Apex Court, further, after referring to various decisions rendered not only by it but also by the High Courts, concluded that - "The view taken in these cases is in accord with the interpretation we have put on the expression "Industrial dispute" as defined in the U.P. Act or the Central Act. Taking into consideration the whole tenor of the Act and the decisions of this Court, the decided cases to the extent that they take a contrary view i.e., an individual dispute is comprised in an "industrial dispute" must unless there is something peculiar as to facts, be held to have been wrongly decided." Further, it was held that - "In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an "industrial dispute" at all and therefore, the Jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge."

In the case of *New India Motors v. K.T. Morris* (supra), the Respondent was in the service of the appellant company as field service representative. The Respondent joined the service of the appellant sometime in May, 1954 as Works Manager in which post he continued till February, 1955. Later, he was appointed as a Field Service Organizer with effect from 1.3.1955. On 18.4.1956, the Management of the Appellant Company called for an explanation of the Respondent in respect of several complaints. After some correspondence, the Respondent's services were terminated on 30.6.1956 on the ground that the appellant had decided to abolish the post of field service representative. The Respondent invoked Section 33A because his case was that at the time his services were terminated an industrial dispute between the appellant and seven of its employees was pending and the Respondent was one of the workmen concerned in the said dispute. Before the Tribunal, the appellant company urged that the Respondent was not a workman as defined by the Act and on the merits it was contended that the appellant had to abolish the post of field service organizer owing to the fact that a part of the agency works of the appellant had been lost. The Tribunal accepted the claim of the Respondent and accordingly ordered reinstatement of the Respondent against which the company carried the matter before the Apex Court. One of the contentions raised before the Apex Court was as to the industrial dispute as defined u/s 2(k) of the Act. The Apex Court held that it is well settled that before

any dispute between the employer and his employee or employees can be said to be an industrial dispute under the Act, it must be sponsored by a number of workmen or by a union representing them. It is not necessary that number of workmen of the Union that sponsors the dispute should represent the majority of workmen. Even so, an individual dispute cannot become an industrial dispute at the instance of the aggrieved individual himself. It must be a dispute between the employer on the one hand and his employees acting collectively on the other. This essential nature of an industrial dispute must be borne in mind in interpreting the material clause in Section 33(1)(a) of the Act.

In the case of *Bombay Union of Journalists v. The Hindu* (supra) one Salivateeswaran claimed to be a fulltime employee of the Respondent, addressed a letter on February 15, 1956 to the Managing Editor that he was proceeding to Europe on March 1, 1956. A reply was given by the Assistant Editor informing the employee that even though the latter was not a full time employee of the Hindu, they could not allow frequent breaks in the performance of his duties and that they would have to relieve him of his duties as correspondent from March 1, 1956, if he proceeded to Europe as arranged by him. Salivateeswaran having persisted in carrying out his project, he was informed by letter dated February 29, 1956 by the Management that he ceased to be the correspondent of the Hindu from March 1, 1956. After returning from his tour, he demanded reinstatement and called upon the management to treat his period of absence out of India as leave. The Management declined to accede to that demand. Hence, the employee filed an application under the provisions of the Bombay Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, Act 45 of 1955, claiming Rs. 1,57,172-80 anas under diverse heads, alleging that termination of his employment was wrongful and that it amounted to retrenchment. The Management denied the said claim and submitted that the authority under the Act had no jurisdiction to decide the disputed questions of fact. Though the claim of the Hindu was rejected by the authority, later, it was decided by the Supreme Court in favour of the Hindu that the authority had no jurisdiction to decide the disputed questions of fact and accordingly the authority declined to proceed with the application. Thereafter, the Bombay Union

of Journalist of which the Petitioner was a member took up the cause of the said Salivateeswaran and finally moved the authority under the Industrial Disputes Act for conciliation and further the State of Bombay referred the dispute under the Industrial Disputes Act to the Tribunal. When the Respondent raised the objection as to the jurisdiction, the Tribunal declined to adjudicate upon the said claim. Thereupon the matter was taken before the Apex Court. The Apex Court after referring to the relevant facts observed that the terms of reference by the Government of Bombay u/s 12(2) indicates that the dispute was primarily between the Hindu, Bombay and the appellant-a single employee, relating to his individual claim in which the other employees of "The Hindu", Bombay, were not directly interested. Thereafter, the Apex Court referred to its decision in the case of *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, ,

where it was observed, "The preponderance of judicial opinion is clearly in favour of the last of three views stated above i.e., a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen and there is considerable reason behind it. Notwithstanding that the language of Section 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 set 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."

In the case of *Vazir Sultan Tobacco Co. v. State of A.P.* (supra) a single Judge of this Court had an occasion to consider similar issue. In that case, the Respondent No. 3 was charged with indiscipline and disobedience of the orders and after an enquiry by the Petitioner-Company, he was dismissed in October, 1987. His cause has been espoused by the Mazdoor Hindu Mahasabha and in 1959 the 3rd Respondent seems to have sent a letter signed by 104 workers espousing his cause. In 1960, his cause was espoused by Hindu Tobacco Cigarette Factory Employees' Union, which was a rival company to the Petitioner. Thereafter on 17th May 1962, the Government referred the dispute as an industrial dispute u/s 10(1)(c) of the Industrial Disputes Act, which was challenged before this Court. One of the contentions in the writ petition was that the cause may not be espoused by the Union, which is not part of the Petitioner company. The learned single Judge after referring to the decisions of the Supreme Court in the case of *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, where it was held that the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make a common cause with the individual workman. Following the said Judgment, a writ of prohibition was issued against the Labour Court from proceeding with the dispute referred by the Government u/s 10(1)(c).

In the case of *Metro Goldwyn Mayor (India) v. Its Workmen* (supra), two of the workmen, who were retrenched from service, were directed to be reinstated in service. Pending the said dispute, the Management entering into an agreement with the remaining six out of seven workmen in regard to revision of pay scales for all the employees, one of the worker not signing such agreement but received salary increased under the terms of the agreement. Subsequent to the reinstatement of the two retrenched workers, their claim for arrears of wages on restoration was settled as a result of the conciliation. Subsequently, the said two workers along with the third worker, who has not signed the agreement, raised a dispute for revision of their pay scales on lines prevailing in another branch of the same employer. The three workmen espousing each other's cause in a collective manner and such dispute was referred for adjudication. The Labour

Court gave a finding that the private settlement did not bind three workmen and ordered revision of pay scales. The said order was assailed in a writ petition before the Madras High Court. One of the contentions advanced was that the reference itself was not maintainable. But the said issue was answered in favour of the workmen, holding that the dispute raised by three out of total strength of eight or nine employees in regard to their wage scales held an industrial dispute as defined u/s 2(k) of the Industrial Disputes Act.

In the case of National Organisation of Bank Workers" Federation of Trade Unions v. Union of India (supra) the issue was whether the Petitioner, a Federation of Registered Trade Unions, which is not a registered body can raise an industrial dispute. In that case, the 2nd Respondent is an association of Banks and has been coordinating the activities of the member Banks in relation to matters of common interest and represent the member Banks at National level in labour matters. One of the settlements entered into by the 2nd Respondent was assailed by the Petitioner on the ground that the said settlement amounts to an unfair labour practice being in gross violation of its rights and its member union. One of the issues before the Bombay High Court was whether the Petitioner-Union can raise an industrial dispute. It was held that the Petitioner being an unregistered body, as a Federation of Trade Unions, it cannot raise an industrial dispute and for the same reason it was held that it was not even competent to file the writ petition.

The learned Counsel also relied upon a decision of the Apex Court in the case of R.L Sharma v. Managing Committee, Dr. Hari Ram (Co.Edn.) H.S.School (supra) wherein it was held that - "Generally, a point not raised before the Tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-Judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved."

13. If we examine the facts in the light of the above decisions, it is true that a dispute to be considered as an industrial dispute in terms of Section 2(k) of the Act, it should not be an individual dispute and it should be related to the workmen. Even with reference to an individual dispute, if it is espoused by the concerned trade union or at least by substantial number of workers, then it can be treated as an industrial dispute, within the meaning of the Act. Admittedly, in the present case, no trade union has espoused the cause of the two workmen, who were dismissed from service. In fact, the elected members of the workmen

entered into a settlement with the employer and one of the terms agreed between the parties was that the elected representatives of the workmen should not espouse the cause of these two workmen. But, however, the issue was taken up as an industrial dispute by the Action Committee of five workmen, which is admittedly not a registered body.

14. From the material on record, there is no evidence that the said five workmen are representing any other workmen as is evident from the material. In fact, it is the case of the Petitioner that even before the Labour Court, the so-called Action Committee also did not present and lead any evidence. On the other hand, the Counsel, who sought to represent the dismissed workmen, who are not made parties to the present proceedings, stated that even before the Labour Court the Action Committee did not represent, but, only the dismissed workmen alone represented the matter. But it is not known how the dismissed workmen could represent their case when they are not made parties and in fact the issue was raised by an Action Committee of five workmen, who did not further pursue the said dispute. Another representation made by the learned Counsel was that the disputes with reference to those five members of the Action Committee were settled and therefore, they have given up the cause of the two workmen. In any case, from the material on record there are 308 workmen working with the Writ Petitioner Company. But if the cause of the two dismissed employees was espoused by only five workers, it could not be considered as an industrial dispute, in the light of the above decisions. Though this issue was raised for the first time before this Court, in the light of the decision of the Apex Court in *R.L. Sharma v. Managing Committee, Dr. Hari Ram (Co.Edn.) H.S.School* (supra), the said issue was taken up for consideration as it goes to the root of the matter. Therefore, in the light of the above decision the dispute raised by the Action Committee on behalf of the two of the dismissed workmen could not be considered as an industrial dispute within the meaning of Section 2(k) of the Act. But, as the Respondents are not represented in the present proceedings, as the Counsel who sought to appear, does not hold any "Vakalat" for any of the respondents and in order to give an opportunity to the Respondent-Action Committee, on this aspect, the impugned award of the Labour Court is set aside and the matter is restored to its file for de novo consideration, especially with reference to the maintainability of the reference, in the light of the issue raised by the petitioner as well as the observations of this Court.

15. The Writ Petition is accordingly allowed to the extent indicated above. No costs.