

(1991) 12 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 6794 of 1991

Kalaniketan (Bombaywala)

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 2, 36

Citation : (1994) 1 GLR 430 : (1994) 2 LLJ 177

Hon'ble Judges : R.A. Mehta, J; M.S. Parikh, J

Bench : Division Bench

Judgement

Mehta, J.—The employer has challenged the jurisdiction of the Conciliation Officer to enter into conciliation proceedings and of the appropriate Government to make a reference of the demands raised by the third respondent-Union. The challenge is mainly on two grounds : (1) that the demand is not an industrial dispute because it is not sponsored by an appreciable number of workmen and large number of workmen have already expressed their will by a signed statement that they do not support the demand and (2) that there is already an operative settlement and, therefore, till that settlement is operative and is not terminated, these demands cannot be made.

2. The original demands were raised in conciliation proceedings Nos. 225 and 226 of 1990. At that time, out of 60 employees of the petitioner undertaking, 30 were members of this respondent No. 3 - Union. During the pendency of these conciliation proceedings, services of 14 workmen, members of the respondent No. 3 - Union came to be terminated and, therefore, complaints - applications were made to the Conciliation Officer being Nos. 1705 to 1718 of 1990. On June 18, 1990, in that proceeding. Conciliation Officer made a nothing in the proceedings sheet that the parties have settled that dispute and the employer had reinstated all the workmen with continuity of service and, therefore, by that conciliation, that dispute had come to an end and the Union had requested that the complaint application be filed. This note is signed by both the parties and a

copy thereof has been produced at page 28 of this petition by way of Annexure "B" and it is submitted that by the said settlement, respondent No. 3 - Union had given up all the demands raised by them in Conciliation Case Nos. 225 and 226 of 1990. As far as Conciliation Case Nos. 225 and 226 of 1990 are concerned, there is no settlement, but on that day, the Union had withdrawn the demands and the conciliation cases were filed.

3. According to the learned Counsel for the petitioner, this withdrawal of demands was a sort of package settlement and the petitioner employer, as a part of that settlement, reinstated 14 workmen and the Union had given up all the demands and because of this settlement, raising of the fresh dispute of the same demands is barred and the second contention is that the petitioner-employer has about 66 employees and the present demands were stated to have been supported by 14 workmen only out of which three employees have disputed their signatures and two employees have been dismissed from service and, therefore, out of 14, only 9 workmen can be said to be surviving for considering as to whether there is any industrial dispute supported by appreciable number of workmen. As far as the question of two employees who are stated to have been dismissed is concerned, it is not shown as to when they came to be dismissed; whether after the demands were raised or before, because it is clear that when the complaints against termination were settled, they were reinstated in service. Within two months thereafter, the present demands are raised by the Union and at that time, it was not shown whether they were out of service, but admittedly today, they are not in service and they have been dismissed from service and their disputes are pending before the appropriate authorities for adjudication. As far as other three employees are concerned, they have disputed their signatures and filed statements before the Conciliation Officer that the signed statement and signatures purported to be theirs are not theirs. At this stage, it is difficult to decide this question finally because the dispute regarding signatures can be appropriately decided on expert evidence, but on comparison, it prima facie appears that the signatures are of same persons, but for the purpose of the present argument, we may proceed on the basis that the present dispute is by nine workmen only out of about 65 employees. Incidentally, these 14 workmen are the same who were dismissed and reinstated earlier. Rest of the workmen have signed statements that they are not supporting the demands and they are not members of any Union and will never become members of any Union in future.

4. In this connection, the learned Counsel for the petitioner has relied on the provisions of the Industrial Disputes Act. Section 12 provides that when any industrial dispute exists or is apprehended, the Conciliation Officer may hold conciliation proceedings and u/s 10, where the appropriate Government is of the opinion that any industrial dispute exists or apprehended, it may refer the industrial dispute for adjudication. Therefore, the question is of "industrial dispute" which is defined in Section 2(k). According to Section 2(k), an industrial dispute means any dispute or difference between the employer and the

workmen. At the same time, it is clear that any individual dispute between the employer and the workmen would be an individual dispute and not an industrial dispute, it is to be something more than an individual dispute. In the present case, demands are of general nature of wage revision and revision of other conditions of service and the question is whether it is an industrial dispute between the employer and the workmen. Admittedly, it is a dispute raised by the only Union in the establishment. It is true that most of the workmen are not the members of the Union and at present only nine workmen are said to be the members of the Union who have espoused this cause. In such circumstances, the question would be whether it can be said that the said industrial dispute is espoused by an appreciable number of workmen.

5. In the case of State of Punjab Vs. The Gandhara Transport Company (P) Ltd. and Others, , the Supreme Court held that the dismissal of an employee was sought to be raised by way of a dispute espoused by only 1/12 workmen in the employment of the company and the Supreme Court came to the conclusion that it is not supported by an appreciable number or substantial body of the workmen so as to constitute a dispute an industrial dispute. In that case, reference was made to earlier judgment of the Supreme Court in the case of Workmen of Rohtak General Transport Co. v. Rohtak General Transport Co. 1962 () LLJ 634, where only five out of 22 workmen had espoused the cause of a dismissed employee and it was held that there were substantial and appreciable number of workmen and industrial dispute was held to be valid to be referred for adjudication.

6. In the case of Workmen of Indian Express (P) Ltd. Vs. The Management, , which is relied upon by the learned Counsel for the petitioner, the Supreme Court had held a dispute to be industrial dispute when it was supported by 25% of the employees. In that case, the main question was whether an outside Union of Journalists could raise an industrial dispute and the Supreme Court held that it could be raised. That Union did have 25% membership in the Company and that was held to be a sufficient number to enable them to raise an industrial dispute and the Supreme Court observed that even if the working journalists were to be taken as 131, i.e., about 25% of them would give representative character to the Union. However, from this, it is not possible to hold that 25% is the minimum criteria laid down by the Supreme Court. That would depend on the facts and circumstances and the total number of workmen a given establishment. If the establishment had very large number of employees running in thousands, Union having a hundred or so employees can be said to be an appreciable number. But in an establishment having 10 employees, one or two, employees cannot be said to be an appreciable number.

7. In the case of Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), , the employer had dismissed from service 18 employees on the same day out of 45 employees and the cause of those dismissed employees was espoused by a Union of which they and none others

were members at the relevant time and reference was made at the instance of the Union and even though that Union had no workman as its members, even in that case, the Supreme Court held that the dispute was an industrial dispute and not an individual one and the reference of the Union was held valid for adjudication and in para 12, the Supreme Court observed as follows :

"It is well known that in dealing with Industrial disputes, Industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of Industrial adjudication in dealing with industrial disputes has necessarily to be pragmatic and the tests which it applies and the considerations on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decisions of this Court in interpreting the effect of the definition prescribed by Section 2(k) of the Act were based on such pragmatic considerations. It may also be conceded that if the dismissal of an individual employee working in an establishment in Delhi is taken up by the Union of workmen in a place away from Delhi, that would clearly not make the dispute an industrial dispute. Section 36 of the Act which deals with the representation of parties, incidentally suggests that the Union which can raise an individual dispute as to a dismissal validity, should be a Union of the same industry. Generally, it is the Union of workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of an establishment have no Union of their own, and some of all of them join the Union of another establishment belonging to the same industry, in such a case, if the said Union takes up the cause of the workmen working in an establishment which has no Union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute because the Union which has sponsored it is not the Union exclusively of the workmen working in the establishment concerned. In every cases, where industrial adjudication has to decide whether a reference in regard to the dismissal of 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. "Industry" has been defined by Section 2(i) of the Act and it seems to us that in some cases, the Union of workman 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 to such an establishment have no Union of their own, and an appreciable number of such workmen had joined such other Union before their dismissal. In fact, the object of Trade Union movement is to encourage the formation of larger and bigger Unions on healthy and proper Trade Union lines and this object would be frustrated if Industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validity referred u/s 10(1) of the Act. it should receive the support of the Union consisting exclusively of the workmen working in the establishment concerned."

8. From this, it can be appreciated that when the establishment does not have any other Union and there is only one Union and rest of the workmen are not organised and any demands are raised, the Supreme Court has seen the necessity of flexibility in considering the appreciable number of employees and in that case, even though there was not a single member of the Union in the establishment the Supreme Court held that it was an industrial dispute.

9. In the case of *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, the case was of a dispute between the employer and a single employee and the Supreme Court has laid down the test whether the dispute was taken up and supported by the Union of the workmen or by appreciable number of workmen. In the present case, it is supported by the Union of the workmen, but the contention is that the said Union does not have appreciable number of workmen. In para 10, the Supreme Court noted that there were only three employees who were journalists of the "Hindu" and in para 11, the Supreme Court found that both the other two employees had not supported and espoused the cause of the dismissed employee and therefore it was held that it was not supported by appreciable number of employees. Out of three, one would be 33% but that was not held to be appreciable number whereas in other case, even 25% was held to be an appreciable number. Therefore, this percentage would obviously be misleading on the finding as to what is an appreciable number. Having regard to all this discussion, it appears that in this organisation, in the facts and circumstances of the case, even the espousal of the dispute by nine employees and by the Union of which are members, is an industrial dispute and the Conciliation Officer was entitled to hold the conciliation proceedings and make its failure report on which the Government can act in accordance with law.

10. The other contention is that there was a settlement and therefore, the fresh demands are barred. There cannot be any dispute that if there is any settlement or award covering the subject-matter, same demands cannot be raised again while the settlement and the award are operating. However, in the present case, there is nothing to come to the conclusion that there is a settlement u/s 2(p). It is true that the conciliation proceedings by way of Case Nos. 225 and 226 of 1990 were finalised and they have been withdrawn on June 18, 1990. However the noting of withdrawal made by the Conciliation Officer does not show that there was any settlement whatsoever. They have been simply withdrawn. The attempt of the learned Counsel for the petitioner is that this withdrawal on the same date as the withdrawal of the complaint-applications regarding termination of 14 employees is clearly indicative of the fact that there was an overall settlement and only because of that settlement, these demands were withdrawn. There is no reason of material for coming to that conclusion. From the noting of the Conciliation Officer in those complaint applications, it is very clear that the parties had agreed and the 14 workmen were reinstated with continuity of service and, therefore, by that conciliation, that dispute had ended and the Union had requested that complaint-applications to be filed and these are the words

used in the noting by the Conciliation Officer.

"SAMADHANTI AA VIVADNO ANT AWEL HOI MADALI KAMDARONO AA FARIYAD ARJI DAPTARE KARAWA VINANTI KARE CHAI."

Therefore, this conciliation is in respect of that complaint regarding termination of 14 employees effected during the pendency of the other conciliation proceedings. It may be that as a result of the settlement, the workmen may have withdrawn those demands with a view to negotiate with the employer, but such withdrawal of demands cannot be said to be a "settlement" as contemplated by Section 2(p) of the Act. Section 2(p) of the Act reads as under :

"Settlement" means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such a manner as may be prescribe and a copy thereof has been sent to (an officer authorised in this behalf by) the appropriate Government and the conciliation officer."

Rule 61-A (2) of Industrial Disputes (Gujarat) Rules 1966, provides that settlement arrived at in the course of conciliation proceedings or otherwise shall be in the Form VI and all the formalities mentioned therein are to be followed for arriving at the settlement. In the present case, none of these formalities are followed. In fact, there is no written settlement. Mere withdrawal of demands cannot be said to be a settlement so as to bar raising of the dispute.

11. In view of our findings that the dispute is raised and supported by an appreciable number of workmen and there is no settlement which would bar the present raising of the industrial dispute, both the contentions raised by the petitioner fail. Hence, the petition is dismissed. Notice discharged. Interim relief vacated.

12. The learned Counsel for the petitioner requests us to continue the interim relief for a period of six weeks to enable him to approach this Supreme Court. In our opinion, it is not necessary to continue the interim relief any longer because within the period of six weeks, nothing is likely to happen which would in any manner prejudice the petitioner. Even if any reference is made, by mere making of that reference, is made by mere making of that reference, no prejudice or hardship is going to be caused to the employer. Hence, the request is not granted.