

(1961) 03 PAT CK 0001

In the Patna High Court

Case No : Misc. Judl. Case No's. 1, 157, 158 and 159 of 1960

Khagesh Sarkar and Others

APPELLANT

Vs

Tatanagar Foundry Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-03-1961

Acts Referred:

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

Citation : AIR 1961 Patna 420 : (1962) 2 LLJ 379

Hon'ble Judges : V. Ramaswami, C.J.; R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B. Sinha and Naseem Ahmed and Brajkishore Prasad, for No. II, for the Appellant; Addl. Govt. Pleader, Bhabananda Mukherjee, B.B. Sen and M.N. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Choudhary, J.—The petitioners in all these four writ applications were workmen of Messrs. Tatanagar Foundry Company Ltd., Jamshedpur," (hereinafter to be referred to as "the Company"). All of them were members of the Jamshedpur Mazdoor Union (hereinafter to be referred to as "the Mazdoor Union"). In all these cases, the respondent No. 1 is the Company, respondent no. 2 is the Presiding Officer of the Labour Court, Chotanagpur Division Ranchi, and respondent No. 3 is the State of Bihar, through the Secretary, Labour Department, A common question of law is involved in all these cases. They have, therefore, with the consent of the parties, been heard together, and this judgment will govern all of them. The short facts are these:-

Sri D. N. Khaskil and Sri Bikram were two of the workmen of the Company, who were subsequently discharged from their services. Their cause was taken up by another Union, namely, the Tatanagar Foundry Workers' Union (hereinafter to be referred to as "the Workers' Union"), of which they were not the members. Ultimately, by Notification No. III/D1-8024/58-4119, dated the 13th of March, 1958, the Government of Bihar referred the dispute u/s 10(1) of the Industrial

Disputes Act, 1947 (hereinafter to be referred to as "the Act") to the Labour Court, Chotanagpur Division, Ranchi for adjudication as to whether the discharge of the above two workmen was justified, and, if not, to what relief they were entitled? The case was numbered as Reference No. 5 of 1958. Sri Bikram, however, died during the Pendency of the reference, and his case was, accordingly, dropped.

During the pendency of the case, however, 11 other workmen, who are the petitioners in M. J. C. No. 157 of 1960, were discharged from their services by the Company; which also filed petitions before the Labour Court for approval of the action taken against them. Those petitions were numbered as Miscellaneous Case Nos. 21 to 31 of 1958. As a result of their discharge, the workmen of the Company resorted to a strike in protest from the 5th of April, 1958 to the 30th of April, 1958, which, according to the Company, was illegal.

The Company ultimately declared a lock-out from the night of the 30th of April, 1958 by issuing statutory notices. After waiting for a considerable period, the Company issued a notification on the 5th of August, 1958 urging upon the willing workers to express their intention of offering their services, and, thereupon, according to the Company, 838 workmen responded to the aforesaid notification, who were given work from the 25th of August, 1958. The Company issued another notification on the 8th of September, 1958, calling upon the rest of the workmen to express their willingness to offer themselves for work on which they might be re-appointed.

They, however, did not respond to that notice. The result was that they lost their services of the Company. They, therefore, filed six separate Petitions of complaint to the Labour Court u/s 33-A of the Act, and they were numbered as Miscellaneous Case Nos. 67 to 72 of 1958. These six miscellaneous cases were heard together and were disposed of by a common award dated the 22nd of July, 1959.

The contention before the Labour Court in these cases on behalf of the Company was that the complaint Petitions were not maintainable inasmuch as the petitioners in those cases were not the workmen concerned in the dispute under reference. The Presiding Officer of the Labour Court accepted this contention of the Company and dismissed all those cases without giving any definite finding with respect to the merits thereof. The petitioners of Miscellaneous Case No. 72 of 1958 have filed (he writ application in M. J. C. No. 1 of 1960; 133 out of 158 petitioners of Miscellaneous Case No. 67 of 1958 have presented the writ application in M. J. C. No. 158 of 1960; and 26 out of 35 petitioners of Miscellaneous Case No. 71 of 1958 are the petitioners in M. J. C. No. 159 of 1960.

2. So far as the applications of the Company for approval of its action taken against the 11 discharged workmen are concerned, the stand taken by the Company at the hearing was that the applications made by it were misconceived,

and, as those 11 discharged workmen were not concerned in the dispute under reference, there was no necessity for it to seek the approval of the Labour Court. This contention was accepted by the Labour Court by its order dated the 21st of February, 1959, and the applications filed by the Company were dismissed. The 11 discharged workmen have filed M. J. C. No. 157 of 1960.

3. Thus, in all these four cases the only question that falls to be determined is whether the petitioners of all these cases were workmen concerned in the dispute under reference or not. If they were not the workmen concerned in the dispute, the order or award of the Labour Court must be held to be correct in law. On the other hand, if it is held that the petitioners were the workmen concerned in the dispute, the cases will have to be sent back to the Labour Court for its decision on merits. It may further be noted here that the main reference, No. 5 of 1958, was disposed of by the Labour Court by an award dated the 31st of August, 1958 in favour of the Company, but that, however, will not have any effect on the question under consideration.

4. Before dealing with the question involved in the cases, reference may be made to certain provisions of the Act which are relevant for the purpose of the decision.

5. Section 18, Sub-section (3), of the Act runs as follows:-

"(3). A settlement arrived at in the course of conciliation proceedings under this Act or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Board, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which, the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

Section 33(1) of the Act says that during the Pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before a Labour Court Or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -- (a) in regard to any matter connected with the dispute, alter, to the Prejudice of the workmen concerned in such dispute, the condition of service applicable to them immediately before the commencement of such

proceeding; or (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of that section lays down that during the Pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or (b) for any misconduct not connected with the dispute discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Section 33-A is in the following terms :

"33A. Where an employer contravenes the Provisions of Section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

6. According to Section 33 of the Act, therefore, the protection from discharge or punishment, whether by dismissal or otherwise, or from alteration in the conditions of service is available only to the workmen concerned in the dispute under reference, and not to every and any workman.. In other words, in order that the employer may have to obtain permission of the Labour Court, before which the reference is pending, in order to discharge or punish or to alter the conditions of service applicable to any workman or to have the approval of that Court with regard to the action taken by the employer in this regard in cases contemplated by Sub-section (2) of that section, the workman should be one who may be concerned in the dispute under reference pending before that Court.

There is no difficulty about the above interpretation of the section, but the real question that falls to be decided is as to in what circumstances the workman Can be said to be a workman concerned in the dispute. Mr. C. B. Mitter, the Presiding Officer of the Labour Court, Chotanagpur Division Ranchi, who disposed of the complaint petitions filed u/s 33A of the Act, has taken the view that, in order that the workmen should be said to be concerned in the dispute, they must have present interest in the results of the reference in the sense that they would be either prejudiced or benefited either in praesenti or in future by the adjudication thereon.

The learned Presiding Officer of the Labour Court observed that the petitioners could not be said to have been concerned in the dispute that was raised on the application of Sri Khaskil, whose services had been dispensed with on account of his having become a leper, and it was only a workman attacked with a similar disease who could be said to be a workman, concerned in the dispute. Similarly, with respect to the dispute as regards Bikram, who had been discharged by the Company for overstaying leave, the Labour Court observed that the other workmen could not be interested in the adjudication regarding the alleged act of indiscipline as no workman with a grain of commonsense will contend that he would suffer prejudice or that his service conditions will be adversely affected if any fellow worker proved to have been guilty of absence without leave were to be discharged.

The view taken by the Labour Court is that other workmen may have had sympathy for the discharged workman and may be interested to know the result of his attempts for reinstatement, but that would not make them the workmen concerned. It is contended on behalf of the petitioners that the reasons given by the Labour Court for holding them not to be workmen concerned are erroneous and its decision is wrong in law.

7. I feel inclined to accept the contention raised on behalf of the petitioners that the reasonings given by the Labour Court are not legally valid, but its decision that the petitioners were not the workmen concerned is, in my opinion, perfectly correct, though on a different ground, which I will presently discuss.

8. On behalf of the petitioners it is submitted that the dispute which was referred for adjudication to the Labour Court was a collective dispute of the workmen of the Company, and their cause was taken up by the Workers' Union, and, as such, all the workmen of the Company were concerned in the dispute, and the petitioners were, therefore, workmen concerned in that dispute within the meaning of Section 33 of the Act, Mr. Shahi, appearing for the State, supports the contention raised on behalf of the petitioners. On behalf of the Company, however, Mr. Mukherjee submits that the petitioners in all these cases as well as Sri Khaskil and Sri Bikram were all members of the Mazdoor Union, and not of the Workers' Union, at whose instance the dispute was referred for adjudication to the Labour Court, and, as such, there was not a collective dispute in which the petitioners or any workmen, other than those two discharged employees, were interested or could be legally said to be concerned in that dispute. It has, therefore, been contended that the decision of the Labour Court in all these cases is correct and legally valid.

9. The question whether a workman is concerned in the dispute under adjudication is a mixed question of law and fact, and it is not possible to lay down any specific and particular test or rule of law or formula for determining whether a particular workman is a workman concerned in the dispute within the meaning of Section 33 of the Act or not. The question in each case will have to be determined in view of the particular facts of that case. The Principles

applicable to come to a decision in this regard, however, are, in my opinion, to find out the nature of the dispute under adjudication, the effect of its decision on the rest of the workmen and the nature of representation of the workmen in the dispute. The facts of each case considered in the light of findings on the above points will determine the question at issue whether in a particular dispute a particular workman was a workman concerned or not within the meaning of the above section.

10. The facts of the cases under consideration are :

(1) that a dispute was referred for adjudication to the Labour Court by the Government of Bihar in the Labour Department between the Company and its workmen represented by the Workers" Union in regard to the question whether the discharge of Sri D. N. Khaskil and Sri Bikram was justified, and, if not, to what relief they were entitled?

(2) that the two discharged Persons as well as the petitioners in all these cases were members of the Mazdoor Union, and not of the Workers" Union; and

(3) that, as found by the Labour Court in its order dated the 21st of February, 1959, which gives rise to M. J. C. 157 of 1960, the petitioners had no connection with the Workers" Union and, as a result of friction between the followers of the two unions, there were criminal cases resulting in conviction of some members of both the unions. The two rival unions were, therefore, at daggers drawn and one could not be said to be competent to represent the members of the other union.

On these facts, it has to be seen whether in these cases the petitioners could be said to be the workmen concerned in the dispute.

11. The very restricted meaning of the expression "workmen concerned" given by the Labour Court so as to include only such workmen who might be directly interested in the dispute, as already observed, is not legally valid, and this view is borne out by the decision of the Supreme Court in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, , in which it was pointed out that, in view of the object of Section 33 of the Act that a fair and satisfactory enquiry of the industrial dispute should be ensured, undisturbed by any action on the Part of the employer or the employee which would create fresh cause for disharmony between them, the narrow construction of the expression ""workmen concerned" so as to include only those workmen who are directly or immediately concerned in the dispute would tend to defeat that object and would leave liberty to the employer to alter the terms and conditions of the remaining workmen and that would inevitably introduce further complications which it is intended to avoid. But the correctness of the actual decision of the Labour Court that the Petitioners were not the workmen concerned in the dispute under reference in these cases is not affected thereby.

12. The dispute under adjudication was with respect to the justification of the Company to discharge the two workmen, Sri Khaskil and Sri Bikram. One of

them had become a leper and had gone on leave for a long time, and on the expiry of the same did not attend to his work, and the other was guilty of overstaying his leave. The nature of the dispute, therefore, was not such as would ordinarily affect the interest of the rest of the workmen or in which any principle applicable to the workmen in general was involved.

True it is that the reference was made with regard to the dispute between the company on the one hand, and its workmen, on the other, so as to give it the characteristic of a collective dispute on behalf of the workmen; but the fact remains that it was not such a dispute in which any principle which might be applicable to the workmen in general was involved. From the reference it appears that the representation of the workmen was through the workers' Union, of which neither the two discharged workmen nor the petitioners in these cases were the members.

The Mazdoor Union, of which they were members, did not take up their cause in this dispute; rather, as the finding stands, the correctness of which has not been challenged before us, the two unions were at daggers drawn and one could not be expected to represent the members of the other. In that view of the matter, it cannot certainly be said that the dispute referred to the Labour Court was a collective dispute on behalf of the workmen of the Company in general.

It has been contended by Mr. Sinha, appearing for the petitioners, that the description in the reference of the workmen being represented through the Worker's Union is not an expression of limitation but is only a statement of the fact that when the order of reference was made they were represented before the Government by the Workers' Union. In support of this contention,, reliance has been placed on a decision of the Labour Appellate Court in Rohtas Industries Ltd. v. K. N. Vyakunta, 1953 Lab AC 625. In that case, the workmen of the Rohtas Industries Ltd. were represented by three Labour unions, two representing the manual labour and the third the clerical staff.

One out of the two unions representing the manual labour represented the workmen in the dispute, and it was contended that the parties to the reference were only the workmen who were members of that union. The dispute which was referred for adjudication was with regard to profit sharing bonus and laying down a principle for determination of the question of incentive bonus and production bonus payable to the workmen in all the plants and establishments of the Rohtas Industries, and monthly supply of one and half maunds of soft coke and two maunds of firewood to the workmen at the rate of annas thirteen and annas seven per maund, respectively, and the restoration of previous facilities available to the workmen in this respect.

The above dispute was such in which all the workmen of the Industries were equally interested. The Labour Appellate Court, in the light of these facts, took the view that the phrase represented by a particular union was merely a statement of the fact, and not a phrase of limitation. The material facts of that

case were, therefore, quite different from the facts of the cases under consideration, as no such question of general application was involved in the dispute in question. In view of the fact that the union of which the petitioners were members was at daggers drawn with the union at whose instance the dispute with respect to the discharge of the two workmen was referred for adjudication, it is not possible to hold that there was a collective dispute raised on behalf of all the workmen in general and the petitioners were Parties to the dispute.

Reliance has also been placed on another decision of the Labour Appellate Tribunal in *Balarama Varma Textiles Ltd., Shencottah v. Kamatchia Pillai*, 1956-1 Lab LJ 418. In that case it was held that where the order of reference relating to dismissal of one workman stated that the employer and the workmen represented by a particular union were parties to the dispute, all the workmen under that employer, irrespective of the fact as to whether they were members of that union or some rival union, must be considered to be workmen concerned in the dispute within the meaning of the Act, in the absence of anything to show that the workers belonging to the rival union had expressed no concern in the dispute referred for adjudication, and so long as it remained a collective dispute as between the management and the workers in general, every workman under that management, irrespective of the union to which he belonged, had an interest in the same.

That case, however, does not rule out the possibility of the members of the rival union not being parties to the proceeding, and, on the facts of the present case, the two rival unions being at daggers drawn, the petitioners being represented by the other union, of which they were not the members, cannot be said Properly to be parties to the dispute.

13. Section 18 of the Act, the relevant provisions of which have been quoted above, clearly show that an award given by the Labour Court, Tribunal or National Tribunal, as the case may be, is binding not only on those workmen who are actually parties to the dispute, but on all workmen who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part. Thus, the scope of the persons on whom the award is binding is much wider than that of the persons who are Parties to the dispute.

In this connection, a reference may be made to the above decision of the Supreme Court reported in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, in which it has been clearly pointed out that the circle of persons bound by the award is very much wider than the Parties to the industrial dispute. In the case of *The Management of Newtowne Studios Vs. T.R. Ethirajulu and Others*, Rajagopalan, J., after considering the relevant provisions of the Act, including Section 18, referred to above, and of the Industrial Disputes. (Appellate Tribunal) Act, 1950, held that the workmen concerned in an industrial dispute or concern-

ed in an appeal obviously constitute a group which may be less comprehensive in its scope than all the workmen employed in that industry or even in one of the establishments of that industry, and that every workman need not necessarily be a workman concerned in a pending industrial dispute or in a pending appeal.

His Lordship further pointed out that every workman could not necessarily be a workman concerned in the industrial dispute and that every workman bound by the award u/s 18 need not necessarily be a workman concerned in that Industrial dispute. The same view has been taken by another decision of the Supreme Court in *The Associated Cement Companies Ltd. Vs. Their Workmen*, in which it has been pointed that the class of employees bound by the award u/s 18 is very much wider than the parties to the industrial dispute in which the award is made, and the said class includes not only all the persons employed in the establishment at the date of the award, but it covers even the sub-sequent employees in the said establishment.

In view of these decisions, it is manifest that, though the award could be binding on the petitioners, if the dispute referred could (not ?) be-legally said to be a collective dispute so as to bind the workmen, in general, they could not necessarily be said to be the workmen concerned in the dispute and, on the facts of this case, there appears to be no doubt that these petitioners were not the work-men concerned in the dispute under reference.

14. Mr. Sinha has relied on the above Madras case reported in *The Management of Newtowne Studios Vs. T.R. Ethirajulu and Others*, for the purpose of showing that on the facts of the present case, the petitioners should be held to be workmen concerned in the dispute. In that case what happened was that 54 persons were retrenched, and an industrial dispute at the instance of the union of which they were members was referred for adjudication, and the question involved in the dispute was as to the settlement of the principles that should govern the rights of the management to effect a retrenchment and the conditions subject to which those rights should be exercised.

Thus, the question involved in the dispute was apparently such that all the workmen then in the employ of the management were concerned in the industrial dispute in the sense that they were interested in this settlement of the principles. During; the pendency of that adjudication, however, some-other workmen were discharged, who lodged complaints u/s 33-A of the Act. In those circumstances, his Lordship held in that case that the workmen discharged subsequently were work-men concerned in the dispute. Thus, the facts of that case are materially different from those of the present case, and the decision in that case has, therefore, no application to these cases.

15. Reliance has also been placed on behalf of the petitioners on the decision of the Supreme Court reported in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, referred to above, in which their Lordships of the Supreme Court, after consideration of Section 2(s) and Section 18 of the Act, held that the expression

"workmen concerned" includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which might be made in the said dispute. But their Lordships pointed out earlier in that very case that an industrial dispute can be raised only by a group of workmen acting on their own or through their union, and 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.

In the present case, as already observed, the petitioners as well as the two discharged workmen of the Company were not the members of the Workers' Union at whose instance the dispute was referred for adjudication, and there is nothing to show that the Mazdoor Union, of which they were members and which was at daggers drawn with the Workers' Union, ever took up the cause of the workmen directly concerned in that dispute. According to the above Supreme Court decision, therefore, there was no industrial dispute which could be referred for adjudication.

16. On a careful consideration of the facts of the present case in the light of the law on the subject, as discussed above, my concluded opinion is that the petitioners were not the workmen concerned in the dispute under reference, and the decision of the Labour Court in this regard is perfectly correct. The complaints u/s 33-A of the Act could be lodged only if there had been any contravention of the provisions of Section 33 of the Act.

If the petitioners were not the workmen concerned, there was no violation or contravention of any of the provisions of Section 33 of the Act, and the complaints of the petitioners were liable to be dismissed on that ground, and were rightly dismissed. Similarly an employer is required to obtain approval of the Labour Court before which a dispute is pending adjudication only if during the pendency of the adjudication he Punishes or alters the conditions of service of the workmen concerned in the dispute, and as the petitioners of M. J. C. No. 157 of 1960 were not the workmen concerned, the Company was not at all required in law to obtain approval of the Labour Court of the action taken by it against those petitioners.

The order dated the 21st of February, 1959 dismissing the petitions filed on behalf of the Company for approval of the action taken by it against the petitioners of M. J. C. No. 157 of 1960 and the award dated the 22nd of July, 1959 dismissing the complaint-petitions filed by the petitioners of the other three cases are, therefore, legally valid, and the petitioners have not been able to make out a case for issue of any writ against the respondents.

17. The result therefore, is that all these applications fail, and are dismissed. There will be no order for costs.

Ramaswami, C.J.

18. I agree.