

(1955) 03 MAD CK 0013
In the Madras High Court

Lakshmi Talkies

APPELLANT

Vs

Munuswami (G.A.) and Others

RESPONDENT

Date of Decision : 02-03-1955

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1955) 2 LLJ 477

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The first respondent Munuswami was a ticket collector in the employ of the Lakshmi Talkies, Perambur. According

to the management, he applied for leave in January 1951. He was then asked to produce a medical certificate, but did not do so. Instead he

stopped away from work but turned up on 3 February 1951, when he had a fit and had to be removed in an unconscious condition. On 8

February 1951 he again went to the office of the Lakshmi Talkies and said that he did not desire to serve them any more and wanted his accounts

to be settled up to the date. Accordingly the management paid him whatever was due and thereafter he ceased to be their employee. Later, he

wanted to return to his original post, but the management did not want him back. According to Munuswami, however, his services were wrongly

terminated in March 1951. Munuswami moved the Commissioner for Workmen's Compensation and prayed for an order directing the Lakshmi

Talkies to reinstate him in his old place. It appears that on 5 July 1951 the Commissioner for Workmen's Compensation passed an order directing

that Munuswami be reinstated with effect from 5 March 1951. The management,

however, did not give effect to this order. On 25 February 1952,

Munuswami wrote to the South Indian Cinema Employees' Association giving his version of the facts and adding:

I am too poor to try the processes of the ordinary courts of the land, and the Government do not choose to interfere further in such cases as they

consider them quite small... In these circumstances I request you to see whether you are prepared to discuss my affair with the members of the

union and make it an industrial dispute under the Industrial Disputes Act, 1947.

On 26 February 1952 some eleven persons claiming to be the employees of the Lakshmi Talkies, Perambur, wrote to the South Indian Cinema

Employees' Association requesting it to take up the case of Munuswami with a view to the order of the Commissioner for Workmen's

Compensation being enforced. On 8 March 1952 the South Indian Cinema Employees' Association passed a resolution, the material part of which

runs as follows:

This general body resolves to authorize and direct the president and the secretary of the association to take all proceedings under the Industrial

Disputes Act, 1947, in order to reinstate the worker and get him all compensation for the intervening period of enforced unemployment, by virtue

of the collective bargaining of the association.

The worker herein referred to is Munuswami. On 24 March 1952 the South Indian Cinema Employees' Association wrote to the labour officer

drawing his attention to the fact that the management had not implemented the order of the Commissioner and requesting him to enquire into the

matter and do the needful. Some conciliation proceedings followed but they yielded no results. On 15 May 1952 the South Indian Cinema

Employees' Association wrote again to the labour officer, Mount Road, alleging:

Even in your presence during the last enquiry the representative of the management remarked that the above worker was the leader. As the above

worker is an active member of our union for the past three years and as the management victimized him, we request you and urge upon you to

refer the above matter to an industrial tribunal at an early date.

On 24 June 1952, the labour officer reported to Government that conciliation efforts had failed. On 18 July 1952, the association wrote to the

Secretary to Government asking that the dispute be referred to an industrial tribunal. On 19 July 1952, the Government passed an order which,

after reciting that an industrial dispute had arisen between the workers and the management of the Lakshmi Talkies, Perambur, Madras, in respect

of the matter mentioned in the annexure to this order, referred the dispute to the industrial tribunal. The annexure to the order reads thus:

Whether the dismissal of G.A. Munuswami, ticket collector, is justified and if not, to what relief he is entitled.

On 4 October 1952, the industrial tribunal passed an order holding that the management's refusal to take back Munuswami was unjustified and

that he was entitled to be reinstated as ticket collector and paid the remuneration due to him with effect from 5 March 1951, on the basis of what

he was drawing at the time of the termination of his services. The management appealed to the Labour Appellate Tribunal but that appeal was

dismissed on 27 November 1953. The Appellate Tribunal, however, observed:

We may at once state that the dispute relates to an individual dispute.

The present petition has been filed by the management for the issue of an appropriate writ to quash the order of the industrial tribunal, Madras,

dated 17 September 1952, and of the Labour Appellate Tribunal, dated 27 November 1953.

2. The principal contention of Mr. O.T.G. Nambiar for the petitioner may be thus summarized. The dispute in the present case was only an

individual dispute between Munuswami and the Lakshmi Talkies and was not an industrial dispute at all. That view has been plainly expressed by

the Labour Appellate Tribunal itself. An industrial dispute is defined in Section 2(k) of the Industrial Disputes Act in these terms:

Industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen

and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any

person.

This definition will only apply to cases where, taking a broad view of the facts, it would be permissible to say that there is a dispute between an

employer and workers generally. If employer A has a quarrel with employer B, it will normally be outside the scope of the Act. The individual

employers concerned must seek redress for any wrong, which they may think they have suffered, in the ordinary courts of law. Similarly, if there is a dispute between a particular employer and a particular employee, then such a dispute would be outside the scope of the Act.

3. In support of this reasoning Mr. Nambiar referred to two decisions of this Court. The first is *Kandan Textiles, Ltd. v. Industrial Tribunal*, Madras 1949 L.L.J. 875 the learned Chief Justice observed:

This undoubtedly suggests that something more than an individual dispute between a worker or a few workers and the employer is meant by an industrial dispute. It suggests that it must be a collective dispute, i.e., a dispute between the employer on the one hand and the entire establishment or a part of the establishment on the other hand in which it is reasonable to presume that at least a substantial number of the employees in the establishment as a whole or in the concerned part of the establishment should be at dispute.

In *Manager, United Commercial Bank Ltd. Vs. Commr. of Labour and Another*, the learned Chief Justice observed:

The point for decision ultimately reduces itself to this. When an individual employee seeks to set aside an order of dismissal against him, is there an industrial dispute within the meaning of the Industrial Disputes Act? If it can be said that a mere individual dispute, such as for instance that in the present case, is an industrial dispute, then it would follow that the remedy of the aggrieved employee would only be a reference under the Industrial Disputes Act. The result would be that Section 41(2) of the Madras Act would have no application at all to the case of dismissed employees except in cases, if there be any such, which would not fall within the Industrial Disputes Act. Having regard to the very wide definition of "industry" in Section 2(j) of the Industrial Disputes Act, it is difficult to conceive of any such case... It may be that the dismissal of even one workman can become the subject of an industrial dispute, but then it is no longer an individual dispute between the dismissed workman and the employer only; it becomes a dispute between the workmen on the one hand and the employer on the other. Such a dispute, it maybe called a collective dispute, certainly cannot be the subject-matter of an appeal u/s 41 of the Madras Act. Such dispute would have to be referred to a tribunal or other

authority u/s 10 of the Industrial Disputes Act¹/₂.

4. Mr. Mohan Kumaramangalam, on the other side, however, contended that this is not the correct view at all. According to him, any dispute

between an employer and his employee will fall within the scope of the definition of "industrial dispute" in Section 2(k). In support of this argument

he referred to the decision in Newspapers Ltd., Allahabad Vs. State Industrial Tribunal, U.P., Allahabad and Others, , where the learned Judge

held:

An industrial dispute can come into existence even if the parties to the dispute be a single employer and a single workman, provided of course

other conditions are satisfied.

It seems to me that the true position lies in between the stand taken by counsel on either side. If, for instance, a particular employer fines or

otherwise punishes a particular workman, say, for carelessness or dismisses him for theft or damage to property, the workman concerned may feel

that he has been wrongly dealt with, but that would be only an individual dispute between him and his employer and it would not be an industrial

dispute. But if the employees or a substantial section of them-I do not say that they should amount to a majority¹/₂ espouse the cause of the

workman and insist on the penalty imposed on him being set aside, or on his being reinstated, then whatever their reasons for the step, if they make

his cause their own, it will cease to be an individual dispute and become an industrial dispute. In other words, an individual dispute can be

converted into an industrial dispute in cases like the present by the cause of the individual workman being made their cause by the other

employees.

5. The question, therefore, is, can we say in the present case that the association has made the cause of Munuswami its own cause?

6. Or, was the association merely helping him without actually making the question an issue between itself and the employer? It will be appreciated

that there is a distinction between an association merely helping an employee, who, it thinks, should be helped, and its taking up his case as one

which affects the general body of workers and adopting it as its own. Mr. Nambiar said that on the facts it is clear that the association did not

make the cause of Munuswami its own cause, because if it had intended to do so,

it would have written to the Lakshmi Talkies which it admittedly did not do. This circumstance, however, does not appear to me to be decisive. A body of workers can make it plain to the management that it has made the cause of a particular worker its own in several other ways also as, for instance, by taking up his cause before the regularly constituted labour authorities. In the present case, it is clear that a certain number of employees of the Lakshmi Talkies wrote to the South Indian Cinema Employees' Association on behalf of Munuswami. It is also clear that the general body of the Employees' Association passed a resolution authorizing its office bearers to take all proceedings under the Industrial Disputes Act in order to secure the reinstatement of Munuswami. In that resolution reference is made to the "collective bargaining" of the association. In other words, the purpose of the resolution was to get Munuswami reinstated by using the collective bargaining power of the association and by resort to the provisions of the Industrial Disputes Act. I am not saying that when it passed this resolution, the association understood all the implications of the "Act. But it is certainly clear that it wanted to use its collective strength to support the cause of Munuswami and when that intention was made plain, I think, I shall be justified in concluding that it had made his case its own. Following this up, the office-bearers of the association wrote repeatedly to the labour officer and appeared before the conciliation officer. In one of these letters it is asserted that Munuswami was an active member of the union and had been victimized. The secretary of the association also wrote to the Government requesting them to make a reference to an industrial tribunal. From these circumstances it seems to be legitimate to infer that the association did make the cause of Munuswami its own cause. The dispute thus ceased to be an individual dispute and became an industrial dispute. The reference made by the Government was therefore competent and both the industrial tribunal and the Appellate Tribunal had jurisdiction to make the orders that they did.

7. The further question was raised whether, since the seat of the Appellate Tribunal is outside the territorial jurisdiction of this Court, a writ can issue to it. Mohan Kumaramangalam contended that it could not and referred to Election Commission, India Vs. Saka Venkata Subba Rao and, , and also to K.S. Rashid and Son Vs. The Income Tax Investigation Commission

etc., . On p. 210 of the report dealing with the latter case it is observed:

There are only two limitations placed upon the exercise of these powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction; that is to say, the writ issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 226 of the Constitution is to be determined.

Mr. O.T.G. Nambiar, on the other side, replied that neither of these decisions would apply for two reasons: one was that the tribunal of first instance was sitting inside Madras and though the Appellate Tribunal has its headquarters outside, the question whether in such a situation a writ could issue was expressly left open in the first of the two cases cited by Mr. Mohan Kumaramangalam. He read the following passage appearing at p. 1155 in *Election Commission, India v. Saka Venkata Rao*:

Our attention has been called to certain decisions of High Courts dealing with the situation where the authority claiming to exercise jurisdiction over a matter at first instance is located in one State and the appellate authority : is located in another State. It is not necessary for the purposes of this appeal to decide which High Court could have jurisdiction in such circumstances to issue prerogative writs under Article 226.

The other was that in the present instance the Appellate Tribunal had merely dismissed the appeal preferred to it, so that, in substance, the order in force is that passed by the tribunal of first instance and that as its seat is inside the territorial jurisdiction of this Court, a writ can issue against it and its order quashed. And if that order is quashed, the order of the Appellate Tribunal which merely confirmed it, will also fail.

6. I have set out the opposing contentions on this part of the case, but consider it unnecessary to express any opinion on them in view of the conclusion I reached earlier, namely, that in the present case the individual

dispute had been converted into an industrial dispute and that, in consequence, the reference by the Government and the subsequent proceedings by the industrial tribunal and the Appellate Tribunal are in order.

7. In the result, the writ petition is dismissed with costs of the first respondent. Counsel's fee Rs. 150.