

(1967) 01 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 402 of 1966

Management of Sri Rurduttroy Jute Mills Private Ltd.

APPELLANT

Vs

Workmen and Others

RESPONDENT

Date of Decision : 23-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10A, 10A(1)

Citation : AIR 1968 Patna 66

Hon'ble Judges : R.L. Narasimham, C.J;U.N. Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, S.B. Sanyal, Choudhary and S.N. Misra, for the Appellant; Ramjee Sharan and Sadhu Saran Sahai, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This application has been filed under Articles 226 and 227 of the Constitution of India by the Management of a Private Limited Company and it is directed against an award dated the 30th May, 1966, given by respondent No. 2, the Commissioner of Labour, Bihar, acting as an Arbitrator u/s 10A of the Industrial Disputes Act (Act XIV of 1947). A copy of the award has been made Annexure A to this application and the petitioner's prayer is that the award may be quashed by a writ of Certiorari or by any other appropriate writ, order or direction.

2. The facts mentioned in the application under consideration are as follows: It is said that in 1965, the Government of Bihar published an arbitration agreement between the petitioner and respondent No. 1 (The Workmen represented by the Katihar Mazdoor Sangh, Katihar) in respect of the dismissal of six of the employees of the petitioner named Wali Mohammad, Nand Kishore, Ram Nichatar, Bhola, Ramjatan and Rajeshwar. In this case we are no longer concerned with the dismissal of Rajeshwar as the Arbitrator refused to interfere with his dismissal. It is stated that, amongst various contentions, the petitioner

had urged before the Arbitrator that the dispute in which the Arbitrator had been appointed for adjudication was in the nature of an individual dispute and was not an industrial dispute and, therefore, the Arbitrator had no jurisdiction to proceed under the Industrial Disputes Act. The other contention raised before the Arbitrator was that there had been an agreement between the Union and the Management that the question of interpretation and implementation of fallback wages in accordance with the recommendations of the Wage Board should be decided by the Tripartite Standing Committee (Jute) with the Labour Commissioner as its ex-officio Chairman, and while the said matter was pending for decision by the Committee, some of the workmen of the Mill had started a propaganda that the workers should not work more, as they would get the guaranteed minimum wage, even if they work less. Rajeshwar Bhagat had started this propaganda and a charge-sheet had been issued against him. Thereafter, he along with the other five persons named above started shouting slogans from the 8th March, 1965 inside and outside the mill premises at Gate No. 1 four times a day and they had used abusive and filthy words towards the officers of the mill. They also intimidated the incoming and the outgoing workers and the situation had continued till the 3rd April, 1965. It was contended that in those circumstances the Management had held an enquiry into the allegations against these workers resulting in their dismissal from service.

3. The Arbitrator has come to the conclusion, upon the first contention of the petitioner, mentioned above, that, as the Management had signed the Arbitration agreement for referring the dispute to Arbitration, it could no longer raise the objection that there was no industrial dispute at all. Upon the facts of the case, the relevant findings given by the Arbitrator have been quoted in paragraph 13 of the application, which are as follows:

(i) None of the witnesses except one has supported the case of the Management to the effect that the concerned workmen abused the workers and, therefore, the charge of abusing the workers is not substantiated.

(ii) The charge of intimidation brought against the workmen is not supported by the evidence on record.

(iii) The charge of shouting slogans demanding payment of fall-back wages and abusing Sri Jagdamba Prasad Sharma and Sri Ram Kumar Sakseria was proved. It may be mentioned that the charges of misconduct alleged against the workmen were of the categories falling under Order 15 (c) (viii) (xvii) (xviii) of the Certified Standing Orders and the Arbitrator has come to the conclusion that five of the workmen, except Rajeshwar, should be reinstated with fifty per cent, of their wages for the period of idleness.

4. The contentions raised before this Court by the learned counsel for the petitioner are that the dispute between the parties was not an industrial dispute and that the Arbitrator was wrong in concluding that the Management could not raise this objection before him. The second argument advanced is that once the

Arbitrator concluded that the charge of shouting slogans demanding payment of fall-back wages and abusing Sri Sharma and Sri Sakseria was proved, it was beyond the jurisdiction of the Arbitrator to interfere with the punishment which had been given by the Management.

In my opinion, the first contention raised on behalf of the petitioner must fail, on the facts of this case. The Arbitrator has mentioned that the dispute between the Workmen and the Management had been taken up by the Katihar Mazdoor Sangh, which was a recognised Trade Union of this establishment, and it has been stated that after the Mazdoor Sangh had raised a dispute about the reinstatement of certain workmen, conciliation proceedings were held and as a result of settlement between the Management and the Mazdoor Sangh, the Arbitration agreement was signed by the parties. The Arbitrator has stated that in the course of the conciliation proceedings and thereafter, upto the time of the signing of the Arbitration agreement, the Management had never raised the question that the dispute was not an industrial dispute within the meaning of the expression given in the Industrial Disputes Act, Learned counsel for the petitioner has relied upon a decision of the Privy Council, in the case of AIR 1935 79 (Privy Council) and has contended that there was no estoppel for the Management to raise this question before the Arbitrator. The learned counsel has also relied upon the case of Farquharson v. Morgan, (1894) 1 QB 552 and has argued that notwithstanding the fact that the Management had signed the Arbitration agreement, it was open to it to question the jurisdiction of the Arbitrator and the latter was bound to go into the question as to the existence of an industrial dispute or not.

I do not think that there is any validity in this contention, as the arbitration in this case was governed by Section 10A of the Industrial Disputes Act and not by Section 10. Until Section 10A was introduced in the Act, it had contained provisions only for reference of disputes by the Government, making it compulsory for the parties to submit to the adjudication by the authorities under the Act. u/s 10A, however it is at the option of the parties to consider whether any industrial dispute exists or not and if the employer and the workmen agree, they may refer their dispute to arbitration by a written agreement. The Arbitrator u/s 10A is not an Industrial Tribunal at all. Their Lordships of the Supreme Court have held in the case of The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, that a reference u/s 10A is not the act of the appropriate Government, but the act of the parties themselves and an Arbitrator under this Section is not a Tribunal Reference to Section 10A(1), the Supreme Court has stated at p. 769 (of Lab LJ) : (at D. 883 of AIR) thus :

"The said provision deals with what the parties can do and provides that if the parties agree and reduce their agreement to writing a reference shall be to the person or persons named by such writing. The fact that the parties can agree to refer their dispute to the labour court, tribunal or national tribunal makes no

difference to the construction of the provision. Sub-section (2) prescribes the form of agreement and this form also supports the same construction. This form requires that the parties should state that they have agreed to refer the subsisting industrial dispute to the arbitration of the persons to be named in the form. Then it is required that the matters in dispute should be specified and several other details indicated. The form ends with the statement that the parties agree that the majority decision of the arbitrators shall be binding on them. This form is to be signed by the respective parties and to be attested by two witnesses. In other words, there is no doubt that the form prescribed by Section 10A(2) is exactly similar to the arbitration agreement; it refers to the dispute, it names the arbitrator and it binds the parties to abide by the majority decision of the arbitrators."

It is, therefore, clear that the parties to an agreement u/s 10A proceed on the footing of an existing or apprehended industrial dispute. In my opinion, the petitioner could not raise this particular question before the Arbitrator, as he has held.

5. On the second contention regarding the charge of shouting slogans and abusing Shri Sharma and Shri Sakseria by five of the workmen concerned, it will be necessary to consider the observations and actual finding of the Arbitrator, along with the relevant Certified Standing Orders. The relevant Certified Standing orders are as follows:

"15 (c) The following acts and omissions shall be treated as misconduct:

(viii) "Drunkenness, fighting riotous or disorderly behaviour or conduct likely to cause a breach of the peace or conduct endangering the life or safety of any other person or any act subversive of discipline and efficiency within the Mill premises."

(xvii) holding meetings or shouting slogans inside the Mill premises.

(xviii) threatening or intimidating any workmen or employee within the Mill premises."

Under the Standing Orders, a workman may be suspended for a period not exceeding four days at a time or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct. The observations and the findings of the Arbitrator are in the following words:

"They have also been charged with the offences of using abusive language against the officers of the factory. As the aforesaid offences constitute misconduct under Rule 15(c) (viii) (xvii) (xviii) of the Certified Standing Orders, they were suspended pending enquiry and were asked to submit their explanation within 24 hours after the receipt of the charge sheet. It was contended on behalf of the union that shouting slogans outside the factory gate did not constitute an offence under the Standing Orders as it was not within the premises of the factory."

"I have considered the contentions of the parties on this issue and I am of the view that even though the workers shouted slogans outside the gate it constituted an offence under the Certified Standing Orders as it was admitted that the slogans were heard by the workers and the staff working inside the factory. Therefore, I hold the view that the workers have been rightly chargesheeted on this account."

"The only charge that is proved against the five workmen is that they used to shout slogans demanding payment of fall back wages and abusing Shri J. P. Sharma and Shri Ram Kumar Sakseria."

On the Standing Orders and on the findings of the Arbitrators it is contended that the five workmen concerned had been rightly dismissed by the Management for the breach of Standing Orders. It is argued that the Arbitrator had no jurisdiction to consider the adequacy of the punishment given to the workmen or the propriety and correctness of it. Reliance is placed on two decisions of the Supreme Court reported in (1963) 2 Lab LJ 78, *Tata Oil Mills Co. v. Its Workmen*, and (1965) 1 Lab LJ 4G2 *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, and on a decision of the Punjab High Court reported in (1966) 2 Lab LJ 258, *Roop Narain Ram Chander (Private) Ltd. v. Industrial Tribunal, Delhi*. The principle laid down by the Supreme Court must be taken to be well settled in the case of Industrial Tribunals, but, it is clear that in this case, the Arbitrator has proceeded on a patently erroneous footing in holding that shouting of slogans outside the gate of the Mill was an offence. Under Standing Order 15 (c) (xvii), shouting slogans inside the Mill premises has been laid down to be a misconduct. Therefore, there was no basis for the dismissal of the five workmen concerned, only on the basis of shouting slogans. Learned counsel for the petitioner has then urged that the Arbitrator had accepted the case of the Management that the five workmen were guilty of abusing Sri Sharma and Sri Sakseria and that had made the workmen concerned guilty of insubordination under Standing Order 15 (c) (i). This Standing Order reads as follows:

"(i) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful or reasonable order of a superior."

Clearly, this was not the case of the Management even at the stage of the domestic enquiry, as will be apparent from a copy of the chargesheet dated the 27th March, 1965, which has been supplied to us by the learned counsel for the petitioner. After describing the offences the chargesheet mentioned thus:

"You are charged with the above offence which is to be treated as misconduct under Rule 15(c)(viii)(xvii)(xviii) of the Standing Orders. You are hereby required to explain in writing the said circumstances alleged against you within 24 hours of the receipt of this chargesheet. Pending further enquiry you are suspended forthwith."

As a matter of fact, on the charge framed and on the evidence led by the Management, the case against the workmen was that they had been abusing the

officers of the Mill by means of slogans. The relevant part of the chargesheet stated:

"You were abusing the officers of the Mill by means of slogans."

and the evidence quoted in paragraph 9 of the application under consideration gives the same indication. Management Witness No. 2 stated thus:

"Mill hai mazdoor ka na Jagdamba ke baap ka na Ram Kumar ke baap ka."

Management Witness No. 3 stated thus:

""Manager log ka naam le kar, Jagdamba Babu aur Ramkumar Babu ka nam lekar kahte hain ke Mill hai mazdoor ka na Jagdamba ke baap ka na Ramkumar ke baap ka.... .. Management witness No. 6 stated thus:

"Nara lagate they ke Mill hai mazdoor ka na Jagdamba ke baap ka na Ram Kumar ke baap ka."

Management Witness No. 7 stated thus:

"Malikko gali dete they ke Jagdambashahi nahin chaleyga. Mill hai mazdoor ka, na Jagadamba ke baap ka na Ram Kumar ke baap ka."

It is clear therefore, that the case of the Management and its evidence was that the slogans itself was an abuse to Sri Sharma and Sri Sakseria. It is not possible to hold that the Arbitrator had, in effect, held that the offence of five of the workmen had fallen under Standing Order No. 15 (c) (i). The Arbitrator has stated in his order that during proceeding before him, it was never mentioned by the Management that the past record of service of the five workmen concerned was unsatisfactory and the Arbitrator has further stated that these workmen were not guilty of violence or moral turpitude. Probably the Arbitrator had in view the factor for guidance of the Management incorporated in Standing Order No. 15 (g) which runs thus:

""In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the Manager shall be supplied to the workman concerned."

And he was of the view that in awarding the punishment of dismissal, the Management had not observed this guiding factor. Be that as it may, when the parties to the dispute had left the solution to the: Arbitrator u/s 10A of the Industrial Disputes Act, I do not think that this Court should interfere under its writ jurisdiction by holding that the Arbitrator's approach to the case was erroneous.

6. Upon a consideration of the arguments advanced by the learned counsel for the parties, I am of the opinion that this application should fail and it is dismissed with costs Hearing fee is assessed at Rs. 200/-.

Narasimham, C.J.

7. I agree.