

(1957) 03 GAU CK 0005
In the Gauhati High Court

Mohon Rice Mill

APPELLANT

Vs

Hazarika and Others

RESPONDENT

Date of Decision : 26-03-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2, 36

Citation : AIR 1957 Guw 111 : (1959) 1 LLJ 565

Hon'ble Judges : Sarjoo Prosad, C.J.;Deka, J

Bench : Division Bench

Judgement

Deka, J.—This rule was issued on an application under Article 226 of the Constitution of India for a writ of mandamus or certiorari or any other prerogative writ for quashing an award passed by the Judge, Industrial Tribunal, Assam, directing reinstatement of one Abdur Rahman to his office as a truck driver with back pay for the period he was out of office.

2. The facts shortly put are that Md. Abdur Rahman claimed to be an employee in the service of the management of Messrs. Mohon Rice Mill, Tezpur. He was a driver drawing Rs. 105 per month and was employed on 5 May 1954, and worked up to 16 July 1955 on which date he was dismissed without any notice and without assigning any reason for his dismissal. It was alleged that the management did not follow the procedure laid down under the standing orders applicable to all industrial establishments in Assam and acted in contravention of Section 12(a) or 14(4) of the aforesaid standing orders.

3. The action of the management was alleged to be arbitrary, illegal and in violation of the standing orders as aforesaid. The Indian National Trade Union Congress prayed for reinstatement of Md. Abdur Rahman with all back wages from the date of his dismissal till reinstatement.

4. The management of Messrs. Mohon Rice Mill, Tezpur, belonging to Sri Mangilal Agarwalla, filed a written statement contesting the claim of the driver. The contention of the mill was that Abdur Rahman was not an employee of the mill

but he was a driver and a personal employee of Sri Mangilal Agarwalla, the owner of the mill. His duty was to drive a public carrier vehicle which belonged to Mangilal Agarwalla and it was his personal property. Abdur Rahman was not a workman of the mill and he had no dispute with the mill as such. It was further alleged that there was no dispute, which could be a subject-matter of reference u/s 10(1)(c) of the Industrial Disputes Act and as such the tribunal had no jurisdiction to go into the matter.

5. The learned Judge of the industrial tribunal classified the objections raised on behalf of the mill as follows:-

(1) It is pleaded that Md. Abdur Rahman is not a workman as defined u/s 2(s) of the Industrial Disputes Act, 1947, as amended.

(2) That when it is not an industrial dispute, as defined u/s 2(A;) of the Act, this tribunal has no jurisdiction to go into the matter.

(3) That, as Md. Abdur Rahman was a personal employee of Sri Mangilal Agarwalla, no industrial dispute as defined u/s 2 (1c) of the Act, can be raised for a dispute between two individuals.

6. The learned Judge came to the finding that though Abdur Rahman was a driver of a truck belonging to Mangilal, he was in fact, an employee of the. mill as he was paid from the funds of the mill. He further held that the dispute between the parties came within the definition of "industrial dispute" as defined in Section 2(k) of the Act. He rejected the suggestion that Abdur Rahman was a personal employee of Mangilal Agarwalla as alleged.

7. It also appears that an objection was raised before the tribunal to the effect that an individual could not raise an industrial dispute even if he is found to work in an industry. The learned Judge rejected this contention as well on the ground that the case of the employee was taken up by the Indian National Trade Union Congress. He expressed himself on this issue in the following manner:

It is now a settled law that even an individual can raise a dispute if any union takes up Ms cause. In this case it is proved that Rahman was a member of Tezpur Mill Mazdoor Union and when he was dismissed his case was taken up by the Mill Mazdoor Union who forwarded it to the Indian National Trade Union Congress Branch at Tezpur to which Tezpur Mill Mazdoor Union was affiliated.

8. He further relied on Section 36 of the Industrial Disputes Act for the purpose of holding that the workman could be represented by the Trade Union Congress.

9. The learned Counsel for the petitioner has taken almost the identical points before us, his contentions being-

(1) that the respondent 2 (Abdur Rahman) was not a workman within the scope of Section 2(s) of the Industrial Disputes Act and, therefore, the dispute raised by him could not be a dispute described in Section 2(k) of the said Act;

(2) that the dispute being an individual one it could not come within the scope of Section 2(k), nor was a reference competent u/s 10(1)(c) of the Industrial Disputes Act;

(3) that the Indian National Trade Union Congress had no locus standi to take up the case of the respondent; and

(4) that there were no materials to show that the respondent 2 was an employee of the mill; and hence the Industrial Disputes Act had no application to the facts of the case.

10. We do not propose to go into the point as to whether Abdur Rahman was an employee of the mill or a personal employee of Mangilal Agarwalla, the proprietor of the mill, since the learned Judge, Industrial Tribunal, finds that the respondent 2 was an employee of the mill, though left to ourselves the possibility is not ruled out that we might have been inclined to take a different view on facts. The other contention, namely, as to whether the Indian National Trade Union Congress could represent the case of a worker cannot be a matter of serious dispute, provided there be proper authorization. Therefore, the only point which is of material importance is whether the dispute as to dismissal and re-employment of Abdur Rahman was an Individual dispute or it was an "industrial dispute" coming within the scope of the Industrial Disputes Act.

"Industrial dispute" is defined in the Act as follows:

"Industrial dispute" means any dispute or difference between employers and employees, 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.

11. Mr. Bhattacharjee appearing for the dismissed worker has drawn our attention to the observations of their Lordships of the Supreme Court made in the case of *Clerks of Calcutta Tramways v. Calcutta Tramways Company, Ltd.* 1956-II L.L.J. 450. The relevant observation runs as follows:

It is now well settled that generally the necessary pre-requisites for this Court's interference to set right decisions arrived at by tribunals whose conclusions on questions of fact are final can be classified under the following categories, namely,

(i) where the tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction;

(ii) where there is an apparent error on the face of the decision; and

(iii) where the tribunal has erroneously applied well-accepted principles of jurisprudence. It is only when errors of this nature exist, that interference is called for.

12. In this particular case, we are to decide whether the tribunal had acted in excess of its jurisdiction conferred upon it under the statute. With a view to decide this point we must go into some of the facts. The case was started on the basis of a report made to the labour officer, Government of Assam, by Sri B. Sarma, Secretary, Indian National Trade Union Congress, Tezpur Branch. The contents of the report were as follows:

I have received a complaint from one Abdur Rahman, a driver of Mohon Rice Mill, Tezpur, that he was dismissed without notice and his wages were not paid in full.

He is an employee of the said mill for about eight years. His dismissal is illegal and unjust.

I would therefore request you to take steps in the same at an early date.

Copy of this document was made Annexure B (2) to the petition filed in this Court. On this report, action was taken by the conciliation officer and the conciliation officer in turn having failed to effect a conciliation between the employer and the employee made a report to the Government on the basis of which a reference u/s 10(1)(c) of the Industrial Disputes Act was made to the Judge, Industrial Tribunal, who passed the award after hearing the parties which has been challenged before us by this petition for a prerogative writ.

13. We have to examine in this case as to whether Abdur Rahman was supported by any other worker of the industry or by any union of such workers. In case he was so supported, the dispute would come within Section 2 (1c) of the Industrial Disputes Act though only the interest of a single worker was involved. Both the parties have cited several rulings before us for consideration and I would like to begin with the latest that is decided by the Supreme Court, in Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, In this case Venkatarama Ayyar, J., observed as followed:

The question whether a dispute by an individual workman would be an industrial dispute as defined in Section 2(k) of the Act XIV of 1947, has evoked considerable conflict of opinion both in the High Courts and in industrial tribunals, and three different views have been expressed thereon :

(i) A dispute which concerns only the rights of individual workers, cannot be held to be an industrial dispute.

(ii) A dispute between an employer and a single employee can be an industrial dispute as defined in Section 2(1c).

(iii) 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

14. His lordship further goes on to observe:

The preponderance of judicial opinion is clearly in favour of the last of the three

views stated above, 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.

15. His lordship, of course, observed in that particular case that in the view which their lordships took of the rights of the respondent under the statute there was no need to express a final opinion on the question whether a dispute simpliciter between an employer and a workman would be an industrial dispute within Section 2(ft) of the Industrial Disputes Act.

16. There is, however, an earlier decision of the Supreme Court, D.N. Banerjee v. P.R. Mukherjee 1953 I L.L.J. 195. There, what was held was that a single employee's case might develop into an industrial dispute when it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress. The relevant paragraph in the judgment which gives a clear exposition of the position runs as follows:

The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful.

But at the same time, having regard to the modern conditions of society where capital and labour have organized themselves in to groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens it is taken up by the trade union of which he is a member, and there is a concerted demand by the employees for redress.

Such trouble may arise in a single establishment or a factory. It may well arise also in such a manner as to cover the industry as a whole in a case where the grievance, if any, passes from the region of individual complaint into a general complaint on behalf of all the workers in the industry. Such wide-spread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between the particular employer and

workman.

17. From these two judgments alone we can see that, what was really needed to be investigated on the objections of the parties was, as to whether Abdur Rahman's case had been sponsored by any of the workers of his industry or by the union to which he belonged or by a federation of the unions of one of which he was a member. Though the learned Judge of the industrial tribunal has observed that Abdur Rahman's case was taken up by the Indian National Trade Union Congress which is a federation of which the Mill Ma2door Union was one of the units, it does not really appear from the record that the Mill Mazdoor Union had taken up the case of Abdur Rahman.

18. It is admitted by Abdur Rahman himself that no other worker of the mill to which he belonged joined him in his cause or in the matter of his being reinstated to his office as a driver of the truck, nor is there any evidence to show that the Mill Mazdoor Union ever took up the case at his instance. All that he says in his deposition before the tribunal is that the secretary of the Mill Mazdoor Union, Koshil Prasad, referred Mm to the secretary of the Indian National Trade Union Congress, when he approached him, which only implies that the latter by himself refused to take any action,

19. The report of the secretary of the Indian National Trade Union Congress to the labour officer also does not disclose that he took up the cause of the employee, Abdur Rahman, at the instance of the Indian National Trade Union Congress or at the instance of the Mill Mazdoor Union or that there was any resolution of any of the unions or any other materials to suggest that he took up the cause of respondent 2 at the instance of his union or even with its knowledge. His report, Annexure B (2), to which I have already referred only suggests that the secretary, Indian National Trade Union Congress was personally approached by Abdur Rahman and he reported to the secretary that he had been an employee of the mill for a period of about eight years and the secretary considered his dismissal to be illegal and unjust.

20. He, however, made no inquiries about the truth of the statement made to him, nor did he take up the case with the mill-owner, nor did he consult any recognized union. The secretary, Indian National Trade Union Congress did not come forward to depose in the proceeding before the Judge, Industrial Tribunal, nor does he produce any document to show that it was at the instance of his union, or of the union of Mill Mazdoor of Tezpur, that he took up the cause of Abdur Rahman. The learned Judge, Industrial Tribunal, gives no indication that he had any materials before him to hold that Indian Natipnal Trade Union Congress was properly authorized to take up the dispute that was purely of the nature of a personal dispute involving the interest of Abdur Rahman alone.

21. The workers in the mill were apathetic and none of them took up his case and there is nothing to show that the Mill Mazdoor Union or Indian National Trade Union Congress as such, made a common cause with him. The dispute affected

nobody except an individual and no general question involving the interest of the community of workers was involved. Even in the present proceeding before us where Koshil Prasad, the Secretary of the Mill Mazdoor Union has filed an affidavit supporting respondent 2's cause, he does not state therein that any representation was made to him by any worker except Abdur Rahman or the union itself took up his cause and moved the Indian National Trade Union Congress to take necessary steps in the matter.

22. In Para. 8 of the counter-affidavit by Koshil Prasad it is stated that the Indian National Trade Union Congress had every right to represent the case of the discharged workman as Tezpur Oil and Rice Mill Mazdoor Union of which Md. Abdur Rahman was a member was affiliated to the National Trade Union Congress, Tezpur Branch. Assuming this is true, namely, that the Indian National Trade Union Congress could represent the Tezpur Oil and Rice Mill Mazdoor Union or any worker who was a member thereof, there was nothing to show that the Indian National Trade Union Congress obtained any such consent or authorization from the Mill Mazdoor Union or that the Indian National Trade Union Congress itself took up the cause of the discharged worker.

23. It has been amply discussed in the observations of their lordships of the Supreme Court that the dispute to be an industrial dispute should be of such a nature which is not confined to one or two individuals, but their oases are taken up by the trade union of which they are members or that there is a concerted demand by the employees on their behalf, which characteristic is absolutely wanting in this case. Therefore, the learned Judge of the industrial tribunal had no other alternative on the facts of this case but to come to a finding that the dispute was confined to Abdur Rahman and his employer and he was not supported by any other member of the mill or by any union of which he was a member and accordingly it was not an industrial dispute.

24. This being the state of things, the reference could not be said to be a valid reference u/s 10(1)(c) of the Industrial Disputes Act since there was no industrial dispute within the meaning of Section 2(ft) of the said Act. Subsequent proceedings were, therefore, without jurisdiction.

25. In the case of Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another, Sinha, J., observed that " where an individual workman is dismissed, and his dismissal is not objected to by any union of workmen or by a majority of his fellow workmen, that is an individual dispute between the employer and an individual workman, and is not an " industrial dispute" and never developed into one. u/s 10 of the Industrial Disputes Act, 1947, Government can only make a reference if, in its opinion, any industrial dispute exists or is apprehended. If no industrial dispute exists or is apprehended, Government has no power to refer to the tribunal and the tribunal has no power to adjudicate upon the alleged dispute so referred. What is an industrial dispute is an objective fact and Government cannot turn a dispute which is not an industrial dispute into an industrial dispute by merely making an order of reference. Nor does the tribunal derive jurisdiction

merely by the fact that there is a reference."

26. A similar view has been expressed by Rajagopalan, J., in the case of Radhakrishna Mills (Pollachi), Ltd. v. State of Madras 1956 I L.L.J. 221 . This view further finds support from many other cases to which reference has been made in the judgment of the Supreme Court in Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, In this view of things we consider that the reference u/s 10(I)(c) was illegal and the award passed on such a reference is liable to be quashed which we do accordingly under Article 226 of the Constitution. The rule is made absolute, but in the circumstances of the case, we make no order for costs.

Sarjoo Prasad, C.J.—I entirely agree. The only point of importance, which arises for decision in this case, is whether there was an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 (Act XIV of 1947), so as to attract the jurisdiction of the industrial tribunal to proceed " under the law. If no such dispute exists, the jurisdiction of the tribunal is ousted and any reference to the tribunal made" u/s 10(1)(c) of the Act of a so-called dispute is illegal and iultra vires and thus saps the whole foundation of the proceedings. The tribunal In deciding any such reference will be, therefore, acting in excess of its jurisdiction. As to what constitutes "industrial dispute" within the meaning of the Act has been considered from time to time by the Supreme Court. The decision in D.N. Banerjee v. P. R. Mukherjee 1953 I L.L.J. 195, should have in my opinion, settled the matter.

2. It was held therein that a single employee's case might develop into an Industrial dispute when, as it often happens, it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress. In a later decision in Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, in which the earlier case was unfortunately not even referred to, some doubt appears to have been cast upon the finality of the views expressed in the earlier judgment on the point. In this later decision, their lordships observed that the question whether a dispute by an individual workman would be an industrial dispute as defined in Section 2(k) of the Act (Act XIV of 1947), had evoked considerable conflict of opinion both in the High Courts and in the industrial tribunals and on the facts of that particular case, they thought it unnecessary to express any final opinion on the question whether a dispute between an employer and a worker would be an industrial dispute.

3. It would thus appear that the question was set at large in spite of the earlier pronouncement. But, if the decision is carefully examined, it is obvious that even in that case, their lordships were inclined to support the view, which was taken by them in the previous judgment. A perusal of the judgment shows that they proceeded to classify the divergent views to which they referred under three different heads:

(1) a dispute which concerns only the rights of individual workers could not be

held to be an industrial dispute;

(2) a dispute between an employer and a single employee could be an industrial dispute as defined in Section 2(k) of the Act (Act XIV of 1947); and

(3) a dispute between an employer and a single employee could not per se be an industrial dispute, but it might become one, if it were taken up by the union or a number of workmen; and they further made it clear that the preponderance of judicial opinion was clearly in favour of the last of the three views stated above and that there was considerable reason behind it.

4. They held that notwithstanding that the language of Section 2(k) of the Act (Act XIV of 1947) was wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act did appear to contemplate that the machinery provided therein should be set in motion to settle only disputes involving the rights of workmen as a class and that a dispute touching individual rights 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. I notice that in a very recent decision of the Supreme Court—the judgment in the case appears to have been delivered by Sri Kapur, J., only on the 20 of this month (since reported) as *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, in an appeal from a decision of the High Court of Allahabad, which arose under the Uttar Pradesh Industrial Disputes Act, where the provisions were analogous, their lordships affirmed the view which they had taken in the earliest of the cases discussed by me above. Sri Kapur, J., is reported to have held there that an individual dispute cannot per se become an industrial dispute, but may become one if taken up by a trade union or a number of workmen. The observations apply with equal force to the interpretation of the term in the Central Act which we are concerned here.

6. Applying the above test it is obvious that there was no industrial dispute in the present instance. It is admitted that no other worker of the mill to which Abdur Rahman claims to belong joined him in supporting his cause, against the employer. Nor was there any evidence to show that any Mill Mazdoor Union of which the worker was a member or that the Indian National Trade Union Congress as such, to which the union may have been affiliated, ever took up" his cause.

7. In fact, there is nothing to show that the Rice Mills Mazdoor Union as such authorized the Indian National Trade Union Congress to which it is said to have been affiliated to take up the cause of the worker either with the employer or with the authorities or that the Indian National Trade Union Congress as such authorized the secretary to do the same. The dispute thus is confined only to two individuals and the secretary of the Indian National Trade Union Congress appears to have taken up the matter with the authorities at his own initiative without being duly authorized by the Trade Union Congress itself for that purpose. My learned brother has rightly pointed out that the essential

characteristics of an industrial dispute are completely lacking in this case. In the circumstances, we are bound to hold that the award given by the industrial tribunal on an illegal reference must be quashed.