

(1984) 02 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1764 of 1980

M/s. Bharat Wagon and Engineering Co. Ltd

APPELLANT

Vs

Assistant Labour Commissioner and Another

RESPONDENT

Date of Decision : 21-02-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b), 36

Citation : (1984) PLJR 375

Hon'ble Judges : S.H.S. Abidi, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Sudhir Kumar Katriar, for the Appellant; J. Krishna for Respondent 2, for the Respondent

Judgement

Hari Lal Agrawal and S.H.S. Abidi, JJ.—After we had concluded the hearing of the application for the petitioners yesterday and adjourned the case for hearing of the respondents as Mr. J. Krishna was not available, today when Mr. J. Krishna appeared for the respondent No. 2, he raised a preliminary objection that the writ application itself was not maintainable on account of defect of party inasmuch as the concerned workmen who were personally impleaded by the management in their application u/s 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as "the Act") filed before the Assistant Labour Commissioner and Conciliation Officer, Muzaffarpur, vide Annexure 5 to their writ application, were left out in this Court. It may be stated that the petitioner in its wisdom thought not to implead the Union of the workmen concerned (as done in the writ application) before the Assistant Labour Commissioner and impleaded the workmen concerned in their individual capacity as opposite parties.

2. In the counter-affidavit that was filed by respondent No. 2 as early as on 17.11.1980, it was very clearly and categorically stated that it was not a party before the Assistant Labour Commissioner in the proceeding in question and, therefore, the application was bad on account of mis-joinder of party. Thus, the Union (respondent No. 2) objected to its joining as party respondent. Not only

that, it further stated that the application was also bad for non-joinder of the necessary party, namely, the two workmen. In spite of this plain and categorical stand of respondent No. 2, the petitioner in its rejoinder still asserted that the application suffered from no defect of parties inasmuch as the concerned workmen were represented by one Mr. K.P. Agrawala before respondent No. 1 and their written statement was filed under his signature. Mr. Katriar appearing for the petitioner still contended that the appearance of the Union in this Court has also been through Mr. K.P. Agrawala and no prejudice can be deemed to be caused to individual workmen as the Union is competent to represent the workmen. The stand of Mr. J. Krishna, on the other hand, is based upon the scheme of section 36 of the Act which deals with question of representation of parties subsection (i) thereof entitled a workmen who is a party to the dispute to be represented in any proceeding under the Act by (a) any member of the executive or other office bearer of a registered trade Union of which he is a member. The representation by Mr. K.P. Agrawala being the Secretary of the Union before "he Assistant Labour Commissioner, therefore, was quite in order and on that account we feel difficulty to accept the contention of Mr. Katriar that the representative himself could be substituted in a subsequent proceeding in place of the concerned workmen as the representative effectively could represent the case of the principal. Even assuming for the sake of argument that "here might be any semblance of force in the contention of Mr. Katriar, by the attitude taken of the said representative that he was wrongly impleaded and that the writ application was defective on account of his misjoinder, he disclaimed to represent any further the two workmen whom he purported to represent, even though the counter-affidavit has been filed on merits also. We, therefore, accept the preliminary objection that the application suffers from defect of parties, as it is elementary that in the absence of the concerned workmen there would be a complete violation of the principle of natural justice. Even respondent No. 2 might espoused their case, but in absence of any specific authority given to him for representing the workmen in this court, any decision rendered by this Court in their absence, would be not binding on them and the same could be challenged at any moment. We would, accordingly, accept the preliminary objection that this application must fail on account of defect of parties.

3. The alternative argument made by Mr. Katriar that he should be permitted to implead the concerned workmen as party respondents must also be rejected at this belated stage inasmuch as in spite of the clear stand taken by respondent No. 2 to this effect, the petitioner took the risk of pursuing this writ application in the absence of the workmen.

About more than 3 1/5 years have already passed since the writ application was filed and, therefore, at this stage any such indulgence granted to the petitioner would be an abuse of the process of the Court. The application, therefore, fails on this short question and is, accordingly, dismissed, but, in the circumstances of the case, without costs.