

(2014) 03 AHC CK 0242

In the Allahabad High Court

Case No : Writ C No. 38325 of 2013 and 4382 of 2014

Munni Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(k), 36

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10(2), 10(5), 2(1), 2A, 4K

Citation : (2014) 9 ADJ 382 : (2014) 142 FLR 40 : (2014) 2 LLJ 487

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Bushra Maryam, Advocate for the Appellant; B.N. Singh, D.P. Singh and Manu Khare, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Heard Miss Bhushra Maryam, learned counsel for the petitioner in the above noted two writ petitions. In Writ Petition No. 4382 of 2014, Sri R.K. Pandey, learned Standing counsel appears for the respondent No. 1, 2 and 3, Sri Manu Khare, learned counsel appears for respondent No. 4 and 5 and Sri B.N. Singh, learned counsel appears for respondent No. 6. In Writ Petition No. 38325 of 2013, Sri R.K. Pandey, learned Standing Counsel appears for respondent No. 1 & 2, Sri Manu Khare, appears for respondent No. 3 & 4 and Sri B.N. Singh, appears for respondent No. 5. Writ Petition No. 38325 of 2013 has been filed challenging the order dated 15.5.2013 passed by the Presiding Officer, Industrial Tribunal-I, U.P. Allahabad. By this impugned order the application of the petitioners to impleade them as respondents in the reference dated 10.1.2008 made by the State Government and registered as Adjudication Case No. 1 of 2008, was rejected by the Industrial Tribunal on the grounds that the Tribunal has no power to amend the reference made by the State Government.

2. In Writ Petition No. 4382 of 2014, the petitioners have challenged the order

dated 25th October, 2013 passed by the respondent No. 2 (Labour Commissioner, U.P. Kanpur) rejecting the application of the petitioner for amending the reference.

3. The petitioners, who claims themselves to be representing a group of workmen of U.P. State Yarn Company Limited, Meja Unit Meja, Allahabad, want to be impleaded as respondent in the reference dated 11.1.2008 made by the State Government and registered as Adjudication Case No. 1 of 2008, by amending the reference. The reference dated 11.1.2008 made by the State Government at the instance of the workers union with regard to the industrial dispute is as under:

Vernacular matter omitted

4. Thus the questions which requires to be considered in these two writ petitions are as under:

(i) Whether individual workman has right to represent before the Industrial Tribunal when the case is espoused by the Union, i.e., U.P. Katai Mill Mazdoor Sangh, Meja Khas, Allahabad,

(ii) Whether the Industrial Tribunal or the Labour Commissioner, Kanpur has power to add a new party as being insisted by the petitioners, in the reference dated 11.1.2008 made by the State Government.

5. Briefly stated the facts of these two writ petitions are that the petitioners, who are five in number, claim themselves to be the workmen of Meja Unit of Uttar Pradesh State Yarn Company Ltd. It is alleged by the petitioners that a meeting of certain workers was held, in which a resolution was passed authorizing the petitioners to represent those workmen in the reference made by the State Government which has been registered as Adjudication Case No. 1 of 2008. It is stated that closure was declared in the aforesaid Mill on 16.10.2000 without prior permission of the State Government as required u/s 6-W of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "U.P. Act"). It is alleged that the closure was illegal and the services of the workmen were never terminated. Workmen made representation to Labour authorities but nothing happened. In paragraph No. 6 of the Writ Petition No. 4382 of 2014, the petitioners have stated by their personal knowledge that the cause of workmen was espoused by respondent No. 6, workers union before the Conciliation Board. Ultimately, a reference dated 11.1.2008 was made by the State Government to the Industrial Tribunal (1) U.P., Allahabad which was registered as Adjudication Case No. 1 of 2008. The petitioners wanted themselves to be impleaded by amending the aforesaid reference on the allegation that they have been authorized to represent in the matter by a certain group of workmen since the respondent No. 6 has joined hands with the respondent-employer. The application moved by the petitioners for the above purposes was rejected by the impugned order dated 15.5.2013 passed by the Industrial Tribunal, filed as Annexure No. 1 in Writ Petition No. 38325 of 2013 and the order dated 25th October, 2013 passed by

the Labour Commissioner, U.P. Kanpur, filed as Annexure No. 1 in Writ Petition No. 4382 of 2014.

Submission on behalf of Petitioners

6. Miss Bushra Maryam submits as under:

(i) It is the discretion of the workmen u/s 6-I of the U.P. Act read with Rule 40 of the U.P. Industrial Disputes Rules, 1957 (hereinafter referred to as "U.P. Rules") to get represented through union or be represented individually or through their representative and as such the impugned orders are violative of the aforesaid provision,

(ii) Respondent No. 6, Union is acting in connivance with the employer and as such the petitioners have a right to be impleaded in the reference so as to contest their case individually or through their own representative.

7. In support of her submission she relied upon the judgments of Hon'ble Supreme Court in the case of The Manager, Hotel Imperial Vs. The Chief Commissioner and Others, and the judgment in the case of Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), .

Submission on behalf of Respondents

8. Sri B.N. Singh submits as under:

(i) As per provisions of the U.P. Act particularly Sections 6 and 6I read with Rule 40 of U.P. Rules only Trade Union or officers of Federation of the Trade Union can represent workmen before Labour Court or Tribunal and not the individual workmen like the petitioners where the dispute is not u/s 2A and as such the impugned orders do not suffer from any error,

(ii) Rule 40(1)(i)(c) of the U.P. Rules as relied by the petitioners shall apply only where there is no union of workers. Since, in the present set of facts there is a workers union which is espousing the cause of the workmen and as such sub-clause (a) shall be applicable.

(iii) Only the respondent workmen union has come forward to raise the Industrial Dispute and is espousing the cause of workmen and as such the petitioners being individuals have no right to espouse the cause.

(iv) Section 6I does not empower few persons to represent on behalf of entire workmen. Besides there was no proceedings or resolution authorizing the petitioners to represent workmen in the matter.

(v) After the reference is made by the State Government, the Industrial Tribunal has no power to amend it or to add parties.

(vi) The reference made raises a dispute of general nature and not of an individual as referable to Section 2A of the U.P. Act, hence the individual workmen are not required to be impleaded otherwise there shall be endless

litigation.

(vii) After the reference in question is answered by the Industrial Tribunal, every individual workmen as well as the Union shall have right to move applications for execution of the award u/s 6H of the U.P. Act.

(viii) The allegation of the petitioners against the respondent-workmen union to be in connivance with the respondent-employer as well as the allegation of mala fide are wholly false, baseless and without any evidence. Besides this allegation of mala fide is not enter-tenable in the absence of impleadment of the individual office bearers of the Union in the writ petition against whom allegations of mala fide have been made.

9. Sri Manu Khare who represents the employer mill submits that the mill in question is owned by a Government Company. The State Government granted huge funds for implementation of voluntarily retirement scheme, and compensation which was executed in terms of the guidelines issued by the bureau of Public Enterprises, State of U.P., dated 8.6.1993, 28.11.2000 and 2.8.2003. The guideline and conditions for payment of voluntarily retirement scheme were pasted on the board on 7.7.2004 and 3.4.2005 and all the employees/workmen submitted their option for the said VRS/Compensation. It is stated in paragraph 6, 7 and 8 of the short counter affidavit filed in Writ Petition No. 38325 of 2013 that the petitioners themselves have availed the VRS/Compensation by voluntarily submitting option form and the amounts due have been paid to them and no dues certificates have also been issued to them. He submits that after the amount has been paid as aforementioned, the alleged employees cease to be under employment of the respondent Industrial Company. On these facts, he submits that the petitioners have no right or locus-standi to file the present writ petition or to involve in any litigation, whatsoever, with the respondent mill in respect of their employment. He further submits that workmen including the petitioners have voluntarily opted and accepted VRS/Compensation. Sri Manu Khare further submits that the respondent's mill is a sick company. Production was stopped in the year 1999 and the unit was closed permanently in the year 2000. He submits that the effect of accepting the VRS by the workmen results in cessation of jural relationship of employer and employees and as such the writ petition raising any dispute in the matter is not maintainable in view of the law laid down by Hon''ble Supreme Court in the case of HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, .

10. Sr. R.K. Pandey supports the argument advanced by Sri Manu Khare and Sri B.N. Singh. In addition he submits that the petitioners have not alleged in their application that they are not members of the respondent workmen union rather it is admitted position that they are the members of the union as appears from paragraph 6 of the writ petition. He submits that the word "discretion" used in Rule 40 of the U.P. Rule is referable to post reference situation, but once the reference is made, the workers can be represented only by the union. He

submits that the reference is general in nature and after it is decided, every workman may take its benefit by invoking the provisions of Section 6H of the Act.

Findings

11. I have carefully considered the submissions of learned counsel for the parties. I find that there is no dispute that the U.P. Katai Mill Mazdoor Sangh, Meja Khas, Allahabad is the union of workmen of the employer mill. In paragraph 6 of the Writ Petition No. 4382 of 2014, the petitioners who are individuals and who allege themselves to be representative of a small group of individual workmen of the aforesaid employer mill, admitted that the respondent No. 6 union has raised the matter before the Conciliation Board on behalf of workmen. The reference made as reproduced above clearly shows that it is not in respect of any individual workman but it relates to all the workmen of the employer mill. The State Government has referred the Industrial Dispute to the Industrial Tribunal in exercise of power conferred u/s 4K of the U.P. Act. The word - "Industrial Dispute" has been defined u/s 2(1) of the U.P. Act as under:

2(1) "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 term of employment or with the conditions of labour, of any person; but does not include an industrial dispute concerning-

(i) any industry carried on by or under the authority of the Central Government or by a Railway Company, or,

(ii) such controlled industry as may be specified in this behalf by Central Government, or

(iii) banking and insurance companies as defined in the Industrial Disputes Act, 1947, or

(iv) a mine or an oil-field;

12. Section 6 of the U.P. Act provides that where an Industrial Dispute has been referred to Labour Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the State Government which shall be in writing and shall be signed by its Presiding Officer. The award shall, subject to the provision of sub-section (4); be published by the State Government within a period of 30 days from the date of its receipt. Section 6-I of the U.P. Act provides for representation of the parties as under:

6-I. Representation of the parties.-(1) Subject to the provisions of sub-sections (2) and (3), the parties to an industrial dispute may be represented before a Board, Labour Court, or Tribunal in the manner prescribed.

(2) No party to any proceeding before a Board shall be represented by a legal petitioner, and no party to any proceeding before a Labour Court or Tribunal shall

be represented by a legal practitioner, unless the consent of the other party or parties to the proceeding and the leave of the Presiding Officer of the Labour Court or Tribunal, as the case may be, has been obtained.

(3) No officer of a Union shall be entitled to represent any party unless a period of two years has elapsed since its registration under the Indian Trade Unions Act, 1926, and the Union has been registered for one trade only.

Provide that an officer of a federation of unions may subject to such conditions as may be prescribed represent any party.

13. For the purposes of Section 6-I manner of representation of the parties has been prescribed in Rule 40 of the U.P. Rules as under:

40. Representation of parties.-(1) The parties may, in their discretion, be represented before a Board, Labour Court or Tribunal,-

(i) in the case of a workman subject to the provision of sub-section (3) of Section 6-I, by-

(a) an officer of a Union of which he is member, or

(b) an officer of a Federation of Unions to which the union referred to in clause (a) above, is affiliated, and

(c) where there is no union of workmen, any representative, duly nominated by the workman who are entitled to make an application before a Conciliation Board under any orders issued by Government, or any member of the executive, or other officer;

(ii) in the case of an employer, by

(a) an officer of a union or Association of employers of which the employer is a member, or

(b) an officer of a federation of unions or associations of employers to which the union or association referred to in clause (a) above, is affiliated, or

(c) by an officer of the concern, if so authorized in writing by the employer:

Provided that no officer of a federation of unions shall be entitled to represent the parties unless the federation has been approved by the Labour Commissioner for this purpose.

(2) A party appearing through a representative shall be bound by the acts of that representative.

(3) An application for approval of a federation of unions for representing the parties before a Board, Labour Court and Tribunal shall be made in Form XX to the Labour Commissioner:

Provided that no federation of unions shall be entitled to apply for approval

unless a period of two years has elapsed since its formation.

(4) On receipt of an application under sub-rule (3) above, the Labour Commissioner may, after making such enquirers, as he deems fit, approve the federation or reject the application. In case a federation is approved its name shall be notified in the official Gazette otherwise the applicant shall be informed of the position in writing by the Labour Commissioner.

(5) The Labour Commissioner or the Registrar of the Trade Unions, Uttar Pradesh, may, at any time before or after a federation has been approved, call for such information from the federation as he considers necessary and the federations shall furnish the information so called for.

(6) Every approved federation shall,-

(a) intimate to the Labour Commissioner and to the registrar of Trade Unions, Uttar Pradesh, in Form XXI every change in the address of its head office and in the members of the executive (including its office bearers) within seven days thereof; and

(b) submit to the Labour Commissioner and to the Registrar of Trade Unions, Uttar Pradesh by December 31 every year a list of unions affiliated to it in Form XXII.

(7) The Labour Commissioner may, at any time and for reasons to be recorded in writing, withdraw the approval granted to a federation under sub-rule (4) above.

(8) A party aggrieved by the order of the Labour Commissioner under sub-rule (4) or (7) may within one month from the date of the receipt of such order prefer an appeal before the State Government, whose decision in the matter shall be final and binding.

14. Sub-sections (2) and (3) of Section 6-I is not applicable on the facts of the present case. Section 6-I(1) of the U.P. Act read with Rule 40(1) of the U.P. Rules is applicable in the present set of facts. The parties before the Tribunal in case of workmen may be represented by an officer of a union as provided in sub-clause (a) and sub-clause (b) of Rule 40(1)(i) of U.P. Rules. In the case of Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, , on the question that as to whether the appellant was not entitled to separate representation in spite of the fact that the union which had espoused his case was being represented by Secretary, Hon"ble Supreme Court held (paragraph 6 to 9) as under:

(6) It is now well-settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in section 2(k) of the Industrial Disputes Act unless it is taken up by a Union of the workmen or by a considerable number of workmen. In Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, , Mr. Justice Venkatarama Ayyar speaking for the Court pointed out after considering numerous decisions in this matter that the preponderance of judicial opinion was clearly in favour of the view that 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 an Union or a number of workmen.

"Notwithstanding that the language of section 2(k) is wide enough to cover disputes, between an employer and a single employee", observed the learned Judge, "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 adjudication under the Act, when the same had not been taken up by the Union or a number of workmen".

(7) This view which has been re-affirmed by the Court in several later decisions recognises the great importance in modern industrial life of collective bargaining between the workman and the employers. It is well known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contracts of service from his employer. As trade unions developed in the country and collective bargaining became the rule the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

(8) The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the Union. The Union or those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal.

(9) It is not unreasonable to think that s. 36 of the Industrial Disputes Act recognises this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. While it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should in our opinion be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned. We are not satisfied that in the present case, there were any such exceptional circumstances. It has been suggested that the Union's Secretary Fateh Singh himself had made the complaint against the appellant which resulted in the order of dismissal it has to be observed however that in spite of everything, the Union did take up this appellant's case against his dismissal as its own. At that time also, Fateh Singh was the Secretary of the Union. If the Union had not taken up his cause, there would not have been any reference. In view of all the circumstances, we are of opinion, that it cannot be said that the Tribunal committed any error in refusing the appellant's prayer for

representation through representatives of his own choice in preference to Fateh Singh, the Secretary of the Union.

15. In the case of the Manager, Hotel Imperial v. Chief Commissioner and Others (supra) relied by learned counsel for the petitioners, Hon"ble Supreme Court considered the main contention on behalf of the Hotel namely, (i) Union could not be made a party to the reference under the Industrial Disputes Act, 1947 and (ii) the reference was vague, as it did not indicate how many of 480 workers of 30 different categories working in the hotel were involved in the dispute, and opined that there is no force in these grounds of attack. In paragraph 3 of the report Hon"ble Supreme Court held that where the dispute is of a general nature, it is unnecessary to mention the names of particular workmen and it is only where a dispute refers to the dismissal etc of particular workman as represented by the union, it may be desirable to mention the names of the workman concerned. Thus, this judgment does not support the case of the petitioners.

16. In the case of P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, , Hon"ble Supreme Court held in paragraph 9 as under:

9. It has to be kept in view that the Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. Thus principles of industrial democracy is the bed-rock of the Act. The employer or a class of employers on the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicably as far as possible by entering into the settlement outside the conciliation proceedings of if no settlement is reached and the dispute reaches conciliator even during conciliation proceedings. In all these negotiation based on collective bargaining individual workman necessarily recedes in background. The reins of bargaining on his behalf is handed over to the union representing such workmen. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at between them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus settlements are the live wires under the Act for ensuring industrial peace and prosperity. Section 10(2) of the Act highlights this position by providing that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. Individual workman comes into the picture only in connection with a limited class of industrial disputes as indicated by Section 2A of the Act dealing with discharges, dismissals, retrenchments or otherwise termination of services of an individual workman. Save and except the aforesaid class of disputes, which an individual workman can rest of the industrial disputes including disputes pertaining to illegal lock out, lay-off and lay-off compensation have to be filtered through the process of collective bargaining and they are disputes of general

nature or class disputes wherein individual workman by himself has no say. In this connection, it is profitable to keep in view a decision of three-member Bench of this Court in the case of *Ram Prasad Vishwakarma v. Chairman Industrial Tribunal, Patna and Others* (supra) where in *Das Gupta, J.*, speaking for this Court made the following pertinent observations on the scheme of the Act, at the time when Section 2A was not on the statute book: It is now well settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in section 2(k) of the Industrial Disputes Act unless it is taken up by a Union of the workmen or by a considerable number of workmen. In *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, , Mr. Justice Venkatarama Ayyar speaking for the Court pointed out after considering numerous decision in this matter that the preponderance of judicial opinion was clearly in favour of the view that 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 a union of a number of workmen. "Notwithstanding that the language of Section 2(k) is wide enough to cover disputes between an employer and a single employee", observed the learned Judge, "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 adjudication under the Act, when the same had not been taken up by the Union or a number of workmen".

This view which has been reaffirmed by the Court in several later decision recognises the great importance in modern industrial life of collective bargaining between the workmen and the employers. It is well known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contracts of service from his employer. As trade unions developed in the country and collective bargaining became the rule the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workman, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the Union. The Union or those workmen who have by their sponsoring turned the Individual dispute into an industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal.

It is not unreasonable to think that Section 36 of the Industrial Disputes Act recognises this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member.....

17. In the case of *Ram Prasad Vishwakarma v. Chairman, Industrial Tribunal, Patna and Others* (supra) and *P. Virudhachalam and Others v. Management of*

Lotus Mills and Another (supra) Hon"ble Supreme Court considered the similar provisions and laid down the law that individual workman comes into the picture only in connection with a limited class of industrial disputes as indicated by Section 2A of the Act dealing with discharges, dismissals, retrenchments or otherwise termination of services of an individual workman. Save and except the aforesaid class of disputes, which an individual workman can rest of the industrial disputes including disputes pertaining to illegal lock out, layoff and lay-off compensation have to be filtered through the process of collective bargaining and they are disputes of general nature or class disputes wherein individual workman by himself has no say. The law laid down in those two judgments are applicable on the facts of the present case inasmuch as the industrial disputes was raised by the respondent Union on account of alleged closure of the unit in violation of Section 6W of the U.P. Act. Thus dispute raised is of general nature or class disputes wherein individual workman by himself has no say.

18. As per provision of Section 6-I(1) of the Act the parties to an industrial dispute may be represented before the Tribunal in the prescribed manner. The 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 term of employment or with the conditions of labour is an "Industrial Dispute" as defined u/s 2(1) of the U.P. Act. Such dispute relates to number of workmen or number of employers, and therefore, cannot be said to be an individual dispute. Such dispute is of general nature covering number of workmen. Dispute falling u/s 2A is a dispute that may be raised by an individual workman and is deemed industrial dispute. The parties are to be represented before the Labour Court or Industrial Tribunal as per provision of Section 6I in the manner prescribed. In Rule 40 of U.P. Rules. As per Rule 40(1), workmen may be represented by an officer of the union of which he is a member or an officer of federation of union to which the union is affiliated and where there is no union of workmen, any representative, duly nominated by the workmen who are entitled to make an application before a Conciliation Board.

19. In the present case, it is undisputed that the respondent union represented and brought the matter before the Conciliation Board. The matter was referred by the State Government to the Industrial Tribunal u/s 4K of the U.P. Act. Individual workman does not come into the picture in such a situation. This is not an Industrial Dispute as indicated by Section 2A of the U.P. Act dealing with discharges, dismissals, retrenchment or otherwise termination of services of an individual workman. Except the aforesaid classes of dispute, Industrial Disputes including dispute pertaining illegal lockout, lay-off and lay-off compensation have to be filtered through the process of collective bargaining as they are dispute of general nature or class disputes wherein individual workman by himself has no say. The necessary corollary to this is that individual workman is at no stage a party to the industrial dispute independently of the union. This view taken by this Court is also supported by the law laid down in para. 9 of the judgment in the case of P. Virudhachalam and Others v. Management of Lotus Mills and Another

(supra).

20. Thus, I have no hesitation to hold that since the industrial dispute of general nature or class dispute has been raised by the respondent union and the reference has been made by the State Government to the Industrial Tribunal u/s 4K of the U.P. Act, the workmen of the employer mill can be represented only by the respondent union in terms of Section 6I of the U.P. Act read with Rule 40(1) of the U.P. Rules.

21. The allegation of mala-fide made by the petitioners against the officers of the union is not entertainable in view of the fact that the alleged officer of the union has not been impleaded as respondent in the present writ petition. Thus, allegation of mala fide cannot be entertained unless the person against whom mala-fide is alleged, has been impleaded as respondent.

22. So far as the second question raised in this writ petition that whether the Industrial Tribunal has power to add parties in the reference already made by the State Government and registered as Adjudication Case No. 1 of 2008, I find that controversy is concluded by the judgment of this Court in the case of Jaswant Singh v. State of U.P. and Others, (1986) 53 FLR 25 (All.) wherein this Court referred to the judgment of Calcutta High Court in the case of Kesoram Cotton Mills Ltd. Vs. Second Labour Court and Others, and observed as under:

Dealing with the powers of the State Government u/s 10(5), B.N. Banerjee, J. of the Calcutta High Court said in Kesoram Cotton Mills Ltd. v. Labour Court and Others that new party could not be added by the State Government to a reference already made by it although it was open to the State Government to make an additional reference to the same Tribunal in respect of those workmen so that both the references could be considered together.

23. So far as the submissions of Sri Manu Khare are concerned, I do not consider it appropriate to express any opinion with regard to locus-standi of the petitioners for reason that they opted for VRS or the compensation, inasmuch as the controversy involved in this writ petition is limited to the impleadment of individual workman in Adjudication Case No. 1 of 2008 in which workmen are represented by the respondent union. It shall open to the respondents represented by Sri Manu Khare to raise all objections as are available to them in law before the Industrial Tribunal.

24. In view of the forgoing discussions, I find that both the writ petitions are devoid of merit, and therefore, deserve to be dismissed. In result, both the writ petitions fail and are hereby dismissed with cost. Interim order dated 9.9.2013 passed in Writ Petition No. 38325 of 2013 is hereby vacated. The Tribunal is directed to decide the Adjudication Case No. 1/2008 in accordance with law as expeditiously as possible and shall not grant any unnecessary adjournment to the parties.