

(1976) 10 BOM CK 0017
In the Bombay High Court
Case No : Spl. C.A. No. 1950 of 1971

National Asphalt Products Constructions Co.	APPELLANT
Vs	
N.M. Kothari and Others	RESPONDENT

Date of Decision : 12-10-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 2, 2A

Citation : (1977) 35 FLR 31 : (1977) 2 LLJ 377 : (1977) MhLj 241

Hon'ble Judges : P.B. Sawant, J;N.B. Naik, J

Bench : Division Bench

Judgement

Sawant, J.—This is a petition filed under Arts. 226 and 227 of the Constitution, challenging the order dated 2-4-1971 passed by the 4th Labour Court, Bombay, on a preliminary point raised by the petitioner in a reference being Reference (IDA) No. 301 of 1968 pending before it.

2. The relevant facts leading to the present petition are as follows :

3. The petitioner-company terminated services of three of its employees. An employee by name A. Raman who had joined its service on 28-2-1966 was retrenched by the company with effect from 14-5-66. Another employee by name Narashimalu who had joined its service in 1960 was dismissed from service after holding an inquiry into his misconduct with effect from 6-8-1966 and the third employee by name Lawrence Carvalho was discharged from service with effect from 19-12-1966 after he had put in service for about two years. Thereafter, according to the second respondent-union, viz., the Rashtriya Mazdoor Union, they raised an industrial dispute on behalf of all the said three workmen by serving upon the company a notice of demand dated 10-4-1967 for reinstatement of the workmen with full back wages and continuity of service. The company having not complied with the said demand, the matter was taken up in conciliation and the Conciliation Officer submitted his failure report to the Government. After receipt of the failure report, the third respondent-State made

a reference of the industrial dispute by its order dated 24-9-1968 by which the industrial dispute came to be referred to the first respondent-Labour Court. The union field a statement of claim before the Labour Court on 9-4-1969 and the company field its written statement in reply to the said statement of claim on 22-7-1969. By the said written statement, the company raised a preliminary point that the dispute referred under the said reference order dated 24-9-1968 was not an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), but was only an individual dispute. It appears that thereafter the Labour Court decided to hear the said point as a preliminary point. The company thereafter field its affidavit on the said preliminary point on 15-12-1969 and in reply thereto, the union through its the General Secretary field its affidavit on 9-2-1970. After hearing the parties and perusing the relevant documents produced by the parties, the first respondent labour Court by its order dated 2-4-1971 held that what was referred as per the impugned order was an industrial dispute within the meaning of the said Act. The Labour Court also held that in view of the amendment of the said Act by introduction of S. 2A, in any event the dispute would become an industrial dispute and hence the reference was tenable. It is against this order that the present petition has been field.

4. Mr. Ramaswami, appearing for the petitioner-company contends that the finding given by the Labour Court that the dispute was espoused by the other workmen of the company is contrary to the evidence on record inasmuch as on the date of reference, viz., 24-9-1968, there was no more than five workmen of the company who were the members of the second respondent-union. It is, therefore, apparent that the cause of these three workmen was not espoused by a substantial number of workmen which alone could have made it an industrial dispute within the meaning of clause (k) of S. 2 of the said Act.

5. In this connection he also relied upon the fact that the order of reference dated 24-9-1968 which is Ext. A to the petition does not make it clear as to whether the reference was of a dispute referred to in clause (k) of S. 2 of the said Act or of the dispute referred to in S. 2A of the said Act. He, therefore, contended that the absence of reference to cl (k) S. 2 of the said Act in the said reference order shows that it was a reference of a dispute as defined in S. 2A and, therefore, an individual dispute and not a dispute espoused by other workmen of the company which is requirement of clause (k) of S. 2 of the said Act.

6. We do not find any merit in this contention raised on behalf of the petitioner-company, for the following reasons : Admittedly, on the date of reference there were 31 employees in the service of the company. As has been stated by the General Secretary of the second respondent-union in his field before the first respondent-Labour Court, all the said 31 employees had become members of the union and were on the roll of the union during the period 1966-67. For the membership period 1967-68, only five of the members had paid their

subscription and the said five included Narashimalu who is concerned in the present dispute. As has been pointed out earlier, workman A. Raman was retrenched from service with effect from 14-5-1966, workman Narashimalu was dismissed from service on 6-8-1966 and the third workman Lawrence Carvalho was discharged from service with effect from 19-12-1966. The dispute was taken up by union by their letter addressed to the company on 10-4-1967 and the order of reference came to be made on 24-9-1968. It would thus appear that on the date of the order of reference, all the 31 employees continued to be the members of the second respondent-union. We are not impressed by the argument advanced by Mr. Ramaswami that since only five of them had paid their membership subscription for the year 1967-68, it should be held that there were no more than five employees members of the second respondent-union on the date of the reference. In law, unless it is provided otherwise in the constitution of an organisation, a person does not cease to be a member of that organisation merely because he fails to pay his membership dues for a particular period. Mr. Ramaswami was unable to show to us that there was any such provision for the cessation of the membership of the second respondent-union on account of the failure of the persons to pay their membership dues. In the absence of such proof, we will have to hold that notwithstanding the fact that except the five, the rest did not pay their subscription for the year 1967-68, they all continued to be the members for the year 1967-68. In this view, it follows that on the date of the reference, viz., 24-9-1968, all the 31 employees of the petitioner-company were the members of the second respondent-union and since the second respondent-union had espoused the cause of the three workmen concerned, it was an industrial dispute within the meaning of clause (k) S. 2 of the said Act.

7. Even assuming for the sake of argument that Mr. Ramaswami is right in his contention that since only five out of 31 employees paid their subscription for the year 1967-68, there were only five employees who were the members of the union on the date of reference, even so we find that five out of 31 employees who espoused the cause of the three workmen of the petitioner-company formed a substantial number and it was sufficient to give a collective character to the dispute of the three workmen concerned. Even on that footing, we are of the view that the dispute did fall within the purview of clause (k) of S. 2 of the said Act.

8. We are further of the view that even assuming that the dispute was not supported by any of the other workmen, it was still capable of being referred to adjudication under S. 10 of the said Act, since it was an industrial dispute within the meaning of S. 2A of the said Act. The contention raised by Mr. Ramaswami relates more to the form than to the substance of the dispute, because after the amendment of the Industrial Disputes Act by addition of S. 2A, which came into force on 1-12-1965, the distinction between a dispute or difference arising out of discharge, dismissal, retrenchment or termination of the service of an individual workman in any other manner, raised by the workman concerned and that raised

on his behalf by other workmen, has no significance, so far as its reference and adjudication is concerned. It must be remembered in this connection that neither clause (k) of S. 2 nor any other provision in the said Act mentions a union of workmen or other workman in connection with the raising of a dispute. It is only the interpretation placed by the Courts on the definition "industrial dispute" given in the said clause (k) which requires that the dispute to be an industrial dispute should be a collective dispute and not an individual dispute. This was necessary because disputes between a workman or workmen on the one hand and the employer on the other, for the resolution of which the Act has been placed on the Statute book, may be of various kinds. Such disputes may relate to the general conditions of service in which all the workmen are interested or it may relate to the termination of service of a workman or workmen, in which others are not interested. If a dispute relating to the general conditions of service is allowed to be raised by an individual workman, that would defeat the very purpose and the object of the said Act, and it was to prevent this, that although the Act did not in so many words state so, the definition of the expression "industrial dispute" in the said clause (k) was interpreted to mean collective dispute espoused by a substantial number of workmen, as distinguished from individual dispute, unsupported by other workmen. Since this definition of industrial dispute was likely to lead and did lead to hardship in cases of disputes of industrial workmen arising out of termination of their services, it was necessary to make provision for raising of such disputes by individual workman, although the same were not supported by other workmen. It was to meet this need that S. 2A was introduced in the said Act. It must also be remembered in this connection that by the said S. 2A, what an individual workman is allowed to raise as an industrial dispute is only a dispute arising out of the termination of his services by either of the various modes. He cannot raise any other dispute as an industrial dispute. This being so, all that was done by S. 2A was to widen for the purpose and to the extent discussed above the definition of "industrial dispute" given in clause (k) of S. 2 of the said Act. Therefore, whether the dispute referred to in the order of reference is an industrial dispute within the meaning of clause (k) of S. 2, or S. 2A of the said Act, is of no consequence so far as the power of the Labour Court to adjudicate the same in service of concerned. In one case it will be the workmen of an employer collectively who will be a party to the dispute and in the other case, it will be the individual workman or workmen concerned. So long as the dispute is one arising out of the termination of service of an employee in one of the various manners, it will constitute an industrial dispute capable of being referred to adjudication under S. 10 of the said Act.

9. The source of power to make the reference of an individual dispute for adjudication lies in S. 10 of the said Act. There is no provision in S. 10 which required the Government to mention, while making the reference that it is doing so in connection with an industrial dispute as defined in S. 2(k) or S. 2A of the said Act. Hence, a mere absence of reference either to S. 2(k) or S. 2A of the Act in the order of reference will not go to show that it is not an industrial dispute

within the meaning of either of the two provisions. Nor is the order of reference assailable on the ground that it does not indicate whether the dispute referred is under one or the other of the two provisions, since the law does not require the Government to do so. If a question does arise as to whether a dispute is one as defined under S. 2(k) or S. 2A, it is for the adjudicating authority to ascertain the same from the material on record.

10. For all the aforesaid reasons, we are of the view that there is no substance in the preliminary point raised on behalf of the petitioner-company. We are in agreement with the finding given by the Labour Court, for the reasons stated above, that what was referred to it for adjudication was an industrial dispute within the meaning of clause (k) of S. 2 of the said Act, as it was espoused by the other workmen of the petitioner-company. We are further of the view that for the purpose of adjudication of the dispute, it is immaterial whether the dispute was one as defined under S. 2(k) or S. 2A of the said Act. It is for this reason that we have also not been able to understand the purpose for which the petitioner-company was advised to raise the said preliminary point.

11. We, therefore, dismiss this petition and discharge the rule with costs in favour of respondents Nos. 2 and 3.

12. In view of the fact that this matter has been pending before the Labour Court for long time, we further direct that the Labour Court should dispose of the matter as expeditiously as possible.