
(1967) 12 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No. 1160 of 1967

Payen and Talbros Ltd.

APPELLANT

Vs

Hans Raj and Others

RESPONDENT

Date of Decision : 01-12-1967

Acts Referred:

Citation : (1968) 4 DLT 130

Hon'ble Judges : S.N. Shankar, J

Bench : Single Bench

Advocate : Anand Prakash, Grover and Madan Mohan, for the Appellant;

Judgement

S.N. Shanker, J.

(1) By order dated 26th December, 1966 the Delhi Administration made a reference to the Industrial Tribunal, Delhi, for the determination of the following issue : Whether the management of the petitioner-Company be required to introduce a Gratuity Scheme and if so, on what terms and conditions ?

(2) The parties filed their pleadings before the Tribunal. In the written statement of the management, the following preliminary objection was taken: "An appreciable or substantial number of workmen employed by the company have not espoused or supported the matter of dispute in under reference and the Union alleging to represent the workmen employed by the company has no locus standi to represent them. In fact, there is another Representative Union recognised by the Company namely Payen-Talbros Employees Union (Regd.) which has entered into a number of long term and comprehensive settlements with the Company in the past regarding various demands of the workmen, but it has not taken up this matter of dispute. The Hon'ble Industrial Tribunal, Delhi, has also held that the Union alleging to represent in this case has no locus standi to represent the Workmen employed by the Company, in its Award dated 29th February, 1964 passed in I. D. No. 1160 of 1962. Under the circumstances, the dispute under reference is not an Industrial Dispute and this Hon'ble Tribunal ;

has no jurisdiction to adjudicate upon the same".

(3) This position was controverted by the workmen in the rejoinder filed by them. Shri Hans Raj, Presiding Officer, Additional Industrial Tribunal, Delhi, before whom the matter was pending framed the following issue: "Has the West Delhi Engineering Mazdoor Union no locus standi?"

(4) By his order dated 10th July, 1967, the Tribunal repelled all the contentions that were raised by the Management before him. The present writ petition is directed against this order.

(5) Several pleas were urged on behalf of the Management before the Tribunal under the above issue. It was contended that appreciable or substantial number of workmen had not espoused or supported the (r) dispute under reference and that the West Delhi Engineering Mazdoor Union, whose name appeared in the reference order as representing the workmen of the petitioner-Company had no locus standi to represent them. The Tribunal, however, found that it was only an individual dispute that needed espousal by an appreciable or substantial number of workmen or the Union of the establishment to convert it into an industrial dispute and that the demand for introduction of the gratuity scheme, which formed the subject matter of the reference before it was a matter common to all the workmen and from its very nature was an industrial dispute and did not need to be espoused or supported. It was further held that the total number of workmen employed by the Management was about 335 when the dispute arose, out of whom about 80 were members of the West Delhi Engineering Mazdoor Union named in the reference and that even a minority groups of workmen could make a demand and thereby raise an industrial dispute, which could be referred for adjudication u/s 10 of the Industrial Disputes Act. To show that the West Delhi Engineering Mazdoor Union did not have a locus standi to represent the workmen of the petitioner-company, reliance was further placed on the award in 1. D. II of 1962 (Exhibit M-IV) and it was urged that in that case, the workmen were sought to be represented by the Engineering Mazdoor Union, but, it was held in terms of the award that this Union had no locus standi to represent them. On the assumption that the present Union was the same as that Union. It was maintained that the present Union could not represent the workmen of the petitioner-company. On this plea, the finding of the Tribunal is that West Delhi Engineering Union, the present Union, having about 80 workmen of the petitioner-Company as its members at the time when the dispute arose in December, 1965 is different from the Engineering Mazdoor Union, which had sought to represent the workmen of the petitioner- Company without a single workmen of this Company being its member.

(6) Another objection taken before the Tribunal to attack the locus standi of the present Union was that there was no resolution of its General Body authorising it to take up the case of the workmen of the petitioner-company. In regard to this plea the findings of the Tribunal is that the passing of a formal resolution was not necessary.

(7) The learned counsel for the petitioner contends that this order is bad and is vitiated by errors apparent on the face of it and is liable to be quashed by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India.

(8) He urges that the finding of the Tribunal that even a minority number of workmen could make a demand and thereby raise an industrial dispute is patently wrong. According to him, in order to be a valid espousal, it should be a majority of workmen. The point raised is, however, wholly unnecessary for purposes of the present case, because in my view no espousal at all was necessary for purposes of the dispute that was referred to the Tribunal in this case because the dispute per se was a collective dispute as opposed to an individual dispute falling u/s 2(k) of the Industrial Disputes Act, 1947. Section 2(k) reads as under:

""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 terms of employment or with the conditions of labour of any persons". (9) The language of this section in itself is wide enough to cover a dispute between an employer and a single employee but having regard to the scheme of the Act and the purpose for which it was enacted and the use of the word "Workmen" in this definition clause, industrial dispute has been construed by the Courts to mean a collective dispute, i. e. a dispute where workmen as a body or a considerable section of them make a common cause with the individual workman and raise a demand, while interpreting this expression in *Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan*, their Lordships of the Supreme Court observed that the Scheme of the Act appeared 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 object of adjudication under the Act, when the same had not been taken up by the Union or number of workmen. In *Newspapers Ltd. v. State Industrial Tribunal*, U. P. ^ this aspect again came up for examination by the Court. A lino typist was dismissed from service by the appellant company on allegations of incompetence. His case was not taken up by any Union of Workers of the appellant company nor by any of the Unions of workmen employed in a similar or allied trade, but the U. P. Working Journalists.

(10) Union, Lucknow took up the matter to the Conciliation Board, Allahabad, and ultimately the U. P. Government made a reference to the Industrial Tribunal. Under these circumstances the question that arose for consideration in this case was whether such a dispute was at all an Industrial dispute under the U. P. Industrial Disputes Act. Their Lordships observed that the provisions of the Act were based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object being to

prevent industrial strife, strikes and lock-outs and the promotion of industrial peace, so viewed, the provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded ; but the matter would be otherwise, when the individual dispute requires the general characteristics of an industrial dispute, viz., the workmen as a body or a considerable section of them make a common cause with the individual workman. The principles enunciated in both these cases were followed in *Bombay Union of Journalists and others v "Hindu" Bombay* and the law was stated in the following terms:"

"Therefore, the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make a common cause with the individual workman." It would, therefore, appear that the condition of an espousal or of a body or a considerable section of workmen making a common cause with the particular dispute arises only when the dispute per se is of the nature of an individual dispute concerning a particular workman as opposed to collective dispute involving all the workmen. In the present case according to the terms of reference reproduced earlier, in this Judgment, the dispute that was referred to the Tribunal related to gratuity scheme sought to be introduced for the benefit of all the workmen employed in the petitioner-Company. It was per se an industrial dispute. No espousal or support was therefore needed for such a dispute. The appropriate Government was entitled u/s 10 of the Industrial Disputes Act, 1947, to refer this dispute to the Tribunal for settlement.

(11) Kelving on the amendment of Section 19 of the Industrial disputes Act, by the insertion of sub clause 7 to this section, the learned counsel for the petitioner in support of his argument contended that if only the majority of workmen, who could raise the dispute that could be referred to the Tribunal. The contention being that after the amendment of Section 19, the settlement or award arrived at between the Management and the workers could be terminated only by a notice issued by a party representing the majority of persons bound by the settlement or award. The learned counsel maintained that the raising of an industrial dispute is a matter at par with this and that ; it could not be the intention of the Legislature to leave the former to the discretion of a few only. I am afraid, there is nothing to support this submission of the learned counsel. Sub clause 7 was inserted in Section 19 of the Industrial Disputes Act, by Act No. 36 of 1934 to introduce the majority rule in regard to the termination of settlement and awards, but no such condition was added to 2(k) of the Industrial Disputes Act, nor was any limitation placed u/s 1 of the Act on the power of the appropriate Government to refer the dispute to the Tribunal only when the same was raised by majority of the workmen. The learned Tribunal under the circumstances is fully correct in my view, in holding that the majority rule was inapplicable in matters of reference of an industrial disputes u/s 10 of the Act. There is no error to call for interference by this Court under articles 226 and 227 of the Constitution.

(12) Strong reliance was then placed on The management of the Karnal Dishllery Co. Ltd., v. The Workmen of Karnal Distillery Co. Ltd.*, The Kandan Textiles, Limited v. The. Industrial Tribunal (/) Mairas^ and Aulia Bldi Factory, B"urhanpur and others v. Industrial Tribunal, Indore and it was contended that in fact no disoute existed between the workmen and the management of the petitioner Company and.. there- fore the whole reference to the Tribunal was bad. No such plea was taken by the petitioner-Company before the Tribunal, All that was argued before it was that the West delhi "Engineering Mazdoor Union could not validity take up the case of its work" men in the absence of any resolution of its General body, authorising it to do so. This could not by any stretch of argument amount to a plea of denial of the existence of a dispute between the petitioner and its workmen.

(13) In the case of Karnal Distillery Works, the management had taken a distinct and unequivocal stand that there did not exist any dispute between it and the workmen. The contention of the management before the Court was that there has to be a dispute at the time of the reference before a Tribunal could have jurisdiction to adjudicate upon the same and the Court found that in fact no such dispute existed in that case and there was thus no basis for the reference and adjudication by the tribunal. On page 163 of the report their Lordships said :

""The evidence recorded by the Tribunal discloses that not a single workmen of the management came forward to state that there was any dispute between the workmen and the Management. not only that, not even a single employee, whose services had been dispensed with, came to support the claim of the President of the Union that there was an industrial dispute between the workmen and the management. On the contrary, all that workmen, who filed their affidavits before the Tribunal, categorically stated that no dispute between them and the management existed. Thus it appears to us that the very basis, on which the Tribunal could proceed, namely, that there was an industrial dispute, did nut exist. The law presupposes the existence of an industrial dispute before the Tribunal could proceed to adjudicate the same." (14) In Kandan Textiles case a reference to the Tribunal was made by the Government on the basis of a letter sent by the President of a Labour Union. The Madras High Court quashed the award on the view that the mere letter was not sufficient to justify the Government to make reference without being satisfied on the material placed before it that dispute did exist or was apprehended. This has no bearing on the facts of this case.

(15) In the case of Aulia Bidi Factory, according to the order of reference dated 20th July 1963 itself the Government was of the opinion that an industrial dispute existed between the Rashtriya Bidi Mazdoor Sangh and the Bidi Manufacturers Association, Burhanpur. The latter Association admittedly being not an employer within the meaning of Section 2(8) of the Act, it was held that there was no occasion for the Government to make a reference as no dispute existed between employers and employers or between employers and work man

or between workmen and workmen.

(16) None of the cases cited at the bar Therefore help the petitioner company. No foundation Was laid by it either in the pleadings before the Tribunal or at any subsequent stage to entitle it to raise this contention . The learned counsel for the respondent has drawn my attention to a letter produced before the Tribunal purporting to be signed by a considerable number of the employees of the petitioner-Company in support of the demand, but it is not necessary to go into this question for the simple reason that it is not open to the petitioner-Company to raise this plea of fact for the first time in these proceedings.

(17) The learned counsel for the petitioner lastly urged that the Tribunal should have held that in face of the Award in Industrial Dispute No. Ii of 1962 the West Delhi Engineering Mazdoor Union did not have locus standi to represent the workmen of the petitioner-Company. It is not possible to uphold this contention. As stated earlier, the finding of the Tribunal is that the present Union i.e. West Engineering Mazdoor Union is a newly formed Union with about 80 workmen of the petitioner Company as its members and is different from the Engineering Mazdoor Union named in the reference of 1. D, 11 of 1962 There is thus no question of any error apparent to entitle the petitioner to invoke Article 776 of the Constitution.

(18) In view of the above discussion, I find that there is no merit in this petition and the same is, Therefore, dismissed. Parties are left to bear their own costs.