
(1969) 08 BOM CK 0012

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 587 of 1969

Rallis India Limited

APPELLANT

Vs

F.H. Lala

RESPONDENT

Date of Decision : 12-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18, 6

Citation : (1969) 71 BOMLR 688 : (1970) MhLj 216

Hon'ble Judges : Vimadalal, J

Bench : Single Bench

Judgement

Vimadalal, J.—This petition was admitted by me and Rule issued in terms -of prayers (a) and (b) thereof which has been made returnable on September 8, 1969. An application is now made before me for leave under Order I Rule 8 being granted as far as respondents Nos. B and 4 are concerned so that they can represent themselves and all other workers who were discharged by Rallifan Ltd. between August 1, 1963 and December 31, 1963. The only facts which need be set out at this stage are that, by a notification dated May 11, 1964, a Court of Inquiry u/s 6 of the Industrial Disputes Act, 1947, was constituted by the State Government to inquire into certain matters of dispute between Rallifan Ltd. and their workmen, including the question as to whether the discharge of some of the workmen was justified. It may be stated that Rallifan Ltd. was amalgamated with the petitioner company on October 13, 1966. The Court of Inquiry submitted its Report to the Government on June 23/1966. On February 15, 1967, the State Government made a Reference to the Industrial Tribunal, Bombay, in respect of the question as to whether the workmen who were discharged or whose services were terminated by the Company during the period from August 1, to December 31, 1963 should be reinstated in service with all back wages and continuity in service. It is that Order of Reference which is sought to be impugned in the present petition on certain grounds into which it is unnecessary to enter for the

purpose of the present application. The Union of workmen which represented them in the Reference has been made respondent No. 2 to the present petition, and the State of Maharashtra has been made respondent No. 5. None of the workmen appeared individually at the hearing- of the Reference. The petitioners, however, seek to join in this petition respondents Nos. 3 and 4, who are two of the workmen discharged during the relevant period from August 1 to December 31, 1963 as representing themselves and other workmen who have been similarly discharged, and the question before me is whether leave under Order I Rule 8 can be granted in a writ petition. As the question is of frequent occurrence and of some importance, after the argument before me was concluded, I had reserved orders in the case.

2. The first question is whether respondent No. 2 Union sufficiently represents the workmen discharged during the relevant period in the present proceedings, with the result that no leave under Order I Rule 8 would be necessary. As far as that question is concerned, the Award of the Industrial Tribunal is not only binding on the members of the Union which has appeared before it, but also on non-members. This is clear from the provisions of Sub-section (3) of Section 18 of the Industrial Disputes Act, 1947. The Union concerned may represent its members in proceedings before the Industrial Tribunal and the award of the Tribunal may be binding even on persons who are not members of such Union, as already stated above, but in my opinion, a union does not represent the workmen in writ proceedings in this Court, nor would orders passed in writ proceedings by this Court be binding upon the workmen if they are not parties to it. As held by this Court in the case of Ahmedalli Abdulhusein v. Lalkaka (1953) 55 Bom. L.R. 578, and by the Allahabad High Court in the case of K.B. Sharma Vs. Transport Commissioner, U.P., Lucknow and Another, persons directly affected by the relief prayed for in a petition under Article 226 must be impleaded. I am, therefore, of the view that it is necessary to make the workmen concerned parties to the present petition.

3. That leads me to the second question which arises on this application viz., whether each of the workmen discharged between August 1, and December 31, 1963 must individually be made a party respondent to this petition, or whether Order I Rule 8 of the CPC applies to proceedings by way of a petition under Article 226 of the Constitution so that any of them can, with the necessary permission of the Court, represent the others so discharged. There can be no doubt that all the workmen whose services have been terminated between August 1, 1963 and December 31, 1963 by Rallifan Ltd. are in the same interest, as far as the present petition is concerned. Order I Rule 8 is, in terms, applicable only to a suit. It has, however, been held by the Supreme Court (S.A.L. Narayan Row v. Jshwarlal Bhagwandas (1965) 5 ITR 149 that a writ petition is a civil proceeding if the primary impact of the act which is impugned is on the civil rights of the party aggrieved, and what was sought to be argued by Mr. Kaka, therefore, was that the provisions of Section 141 of the CPC operate to make Order I Rule 8 applicable to proceedings by way of a writ under Article 226 of the

Constitution. Section 141 makes the CPC applicable to all civil proceedings only "as far as it can be made applicable" and the question that arises, therefore, is whether there is anything- in the very nature of writ proceedings which would make the procedure under Order I Rule 8 inapplicable.

4. If an application for leave under Order I Rule 8 were to be made in respect of the petitioners to a writ petition, it would, in my opinion, have to be rejected on the ground that the procedure under Order 1 Rule 8 is inappropriate and inapplicable. The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the Court under Article 226 of the Constitution, and the right that can be enforced under that Article must ordinarily be "the personal or individual right of the applicant" (*State of Punjab Vs. Suraj Parkash Kapur etc.*,). It must ordinarily be "the personal or individual right of the petitioner himself" who complains of the infraction of such right and approaches the Court for relief (*The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*,). In a writ petition, there, fore, each petitioner is ventilating his own personal grievance and vindicating his own individual right. Moreover, the granting of relief to the petitioner in a writ petition is discretionary and depends on several factors which the Court has to take into account, such as, the exhausting of an alternative remedy by the petitioner before the Court, the conduct of a particular petitioner being such as not to disentitle him to relief (Halsbury 3rd Bdn. Vol. 11 pp. 140-141 para. 265), the violation of rules of natural justice with regard to one or other of the petitioners, as well as the question of delay. Such considerations apply even when the petitioner complains of the violation of a fundamental right under the Constitution and, indeed, the Supreme Court has so held in regard to the question of delay in two very recent unreported decisions (*Tilokchand Motichand v. H.B. Munshi* (1968) Writ petition No. 53 of 1968 decided on November 22, 1968 (Supreme Court) and *Durga Prashad v. Chief Controller of Imports & Exports* (1968) Civil Appeal No. 116 of 1965 decided on November 22, 1968 (Supreme Court), following the view of Gajendragadkar C.J. in the unreported Supreme Court decision in *Smt. Narayami Devi Khaitan v. State of Bihar* (1964) Civil Appeal No. 140 of 1964 decided on September 22, 1964(Supreme Court)). The Court has also to consider the question whether to grant relief to a particular petitioner would work injustice in a broad sense, as was done by two Division Benches of this Court in the cases of *State of Bombay v. Morarji* (1958) 61 Bom. L.R. 318 and *Paygonda Surgonda v. Jingonda* (1967) 69 Bom. L.R. 579. To grant leave under Order I Rule 8 to petitioners to apply for relief under Article 226 on behalf of themselves and all others in the same interest would amount to permitting persons who may be disentitled to relief in their own right on one or other of the above grounds to get relief by the process of being "lumped together" with others who are entitled to it. The granting of such leave in respect of the petitioners to a writ petition is therefore inappropriate. My attention was drawn to certain observations of a Division Bench of this Court in the case of *United Motors (India) Ltd. v. The State of Bombay* (1952) 4 S.T.C. 10 : 55 Bom.

L.R. 246 in which this very point was raised in regard to the petitioners in that case. Though the learned Chief Justice who delivered the judgment of the Bench distinguished the observations in an old English case which was cited before him which indicated that leave under Order I Rule 8 could not be granted to a petitioner in a writ petition, he did not proceed to decide that point at all, but what he said, after a brief discussion, was,-

...even assuming that the Advocate-General was right, at the highest, the joining of more than one petitioner would be a surplusage and that surplusage could be cured by six of the petitioners being struck off the record. The petition could easily be maintained by one out of the seven petitioners.

The learned Chief Justice then passed on to other points in the case. I do not read the judgment of the Bench delivered by Chagla C.J. in the United Motors" case as being a decision on the point which I am now considering. In S.M. Muhammad Ibrahim Vs. The Deputy Commercial Tax Officer, the matter was put up before Rajagopala Ayyangar J. on an office objection relating to the joinder of eleven petitioners in a petition under Article 226 of the Constitution in which the vires of a State Act was impugned. The learned Judge in upholding the office objection observed as follows (p. 25) :

...Where a petitioner desires to question the validity or legality of an order, he is entitled to apply for an appropriate writ but this right of his flows from the order affecting him. The fact that similar orders are passed in the case of other individuals also, be it by the same officer or authority, does not mean that the injury caused is a common or class injury so as to justify a single petition with all the individuals similarly affected joining in it as petitioners. The provision in Order I, Rule 8, Civil Procedure Code, seeks to obviate the inconveniences arising out of a multiplicity of parties--but neither, the rule nor its principle can be extended to Writ Petitions. Again the fact that the relief prayed for by the several petitioners each of whose individual right is alleged to have been invaded improperly by the impugned order is grounded on a common objection, the invalidity of the legislation or the rule or some order interpreting or enforcing the statute or the rule does not also afford any basis for a joint Writ Petition by several petitioners aggrieved by similar orders, Each of them has to the independent petitions, paying separate Court-fee on each, with separate vakalat, etc.

4. The learned judge, therefore, directed that the petition be amended so as to retain only one petitioner on the record, and admitted the petition as so amended. The view expressed by Rajagopala Ayyangar J. in the passage quoted above was clearly an obiter dictum for, as the report of the case in which the Office Note has been reproduced in the footnote shows, no question of leave under Order I Rule 8 arose before the learned judge in that case. For the reasons stated above, I am, however, in agreement with the view expressed by Rajagopala Ayyangar J. that neither Order I Rule 8, nor its principle, can be extended to petitioners in a writ petition. This decision of Rajagopala Ayyangar J.

Was referred to by Subba Rao C.J. in a Division Bench decision in the case of Annam Adinarayana and Another Vs. State of Andhra Pradesh and Another, where, in discussing the same, Subba Rao C.J. observed (para, 7 at p. 18) :

This judgment is authority for the position that the provisions of Order I Rule 8 C.P.C. cannot be applied to a writ petition. It is not necessary to express our opinion in this case but the conclusion may be justified on the ground that the said procedure is inappropriate to writ petitions.

The statement of Subba Rao C.J. that the judgment in Muhammad Ibrahim's case is authority for the proposition that the provisions of Order I Rule 8 cannot be applied to writ petitions is, with respect, erroneous, in so far as the same is an obiter dictum, as already stated above. Subba Rao C.J. then proceeded to bold (paras. 5 and 10) that the position in regard to the other provisions of Order I, and in regard to O, II of the CPC is different and the same are applicable to petitions under Article 226 of the Constitution by reason of Section 141 of the Code of Civil Procedure. Though Subba Rao C.J. was also not concerned in the said case with the provisions of Order I Rule 8 of the Code of Civil Procedure, he has indicated in the passage from his judgment quoted above that the view taken by Rajagopala Ayyangar J. in Md. Ibrahim's case might well be justified on the ground that the procedure under Order I Rule 8 was inappropriate in regard to writ petitions. The decision of the Calcutta High Court in the case of Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others, , S.B., paras 35A, 36 and 271 was also referred to by Mr. Kaka in the course of his arguments, but the same refers to the applicability of Order I Rule 1 and Order II Rules 1 and 3 of the CPC and has no bearing on the question as to whether Order I Rule 8 of the CPC is applicable to a petition under Article 226 of the Constitution. Another decision of the Calcutta High Court viz. that in the case of Bimal Behari v. State of West Bengal (1962) C.W.N. 912 has been referred to in the judgment of Sinha C.J. (para. 86) in the Jay Engineering Works" case as laying down that Order I Rule 8 of the CPC applies to a writ petition by reason of Section 141 of that Code, but on a careful perusal of the judgment of Banerjee J. in the said case, I am not prepared to regard it as an express decision to that point. In any event, if Bimal Behari's case can be construed as laying down that proposition by implication, I do not agree with the same. In my opinion, none of the cases discussed by me above can be said to be a direct authority on the point which I am now considering, For the reasons-stated above, I however approve of the view expressed by Rajagopala Ayyangar J. in his obiter dictum in Muhammad Ibrahim's case cited above and hold that if an application for leave under Order I Rule 8 were to be made in respect of the petitioners in a petition under Article 226 of the Constitution, it would be appropriate to apply the provisions of Order I Rule 8 to the same. In that view of the matter, the words "as far as it can be made applicable" in Section 141 of the CPC would make the provisions of Order I Rule 8 inapplicable in such cases.

5. The question which" I must proceed to consider for the purpose of the present

application however is, whether any of the considerations mentioned by me above for rejecting an application for leave under Order I Rule 8 in respect of the petitioners to a writ petition comes into play when leave under Order I Rule 8 is applied for in respect of the respondents to such a petition. I have, after careful consideration, come to the conclusion that none of those considerations is apposite in the case of an application for leave under Order I Rule 8 in respect of the respondents and it cannot therefore be said that the procedure under Order I Rule 8 is inappropriate in regard to them. There is no reason why the inconvenience arising out of multiplicity of respondents in the same interest should not be obviated. The granting of leave under Order 1 Rule 8 in respect of respondents would obviate the necessity of having, for instance, to join hundreds of employees who might be directly affected in a writ petition by an aggrieved employer or employee. I, therefore, hold that Order 1 Rule 8 is applicable in the case of leave being applied for in respect of the respondents to a writ petition under Article 226 of the Constitution, if the conditions of Order I Rule 8 are satisfied viz., that there are numerous parties, who are in the same interest. In the present case, all the workmen whose services were terminated during the relevant period are in the same interest, and they are numerous, and those conditions are, therefore, satisfied.

6. I, therefore, grant leave under Order I Rule 8 of the CPC applied for by the petitioners to implead respondents Nos. 3 and 4 on behalf of themselves and other workmen who were discharged or whose services were terminated between August 1, and December 31, 1963.