
(1972) 04 PAT CK 0020
In the Patna High Court
Case No : C.W.J. No. 411 of 1970

Rameshwar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-04-1972

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10, 18(3)(a), 2, 36
Industrial Employment (Standing Orders) Act, 1946 — Section 6

Citation : (1972) PLJR 398

Hon'ble Judges : S. Akbar Husain, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Ranen Roy, Ranjit Kumar Das and Krishnadeva Prasad, for the Appellant; Shreenath Singh, Kumar Bahadur, J. Krishna and Karuna Nidhan Keshav, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—This is an application under Articles 226 and 227 of the Constitution of India by 127 workmen of the Heavy Engineering Corporation Limited, Ranchi. The petitioners' case is that the Corporation was originally established by the Government of India in the year 1956 and it was being run and managed by the Ministry of Steel, Mines and Heavy Engineering departmentally. The Corporation was incorporated and registered as a Company in the month of December 1958. Before its formation as the Company, its employees from the year beginning were governed by the same rules of leave and holidays as the ones governing the Central Government staff. Even after the formation of the Company, these rules used to govern their service conditions. On the 21st of May, 1964, the Standing Orders of the Corporation were certified by the appellate authority u/s 6 of the Industrial Employment (Standing Orders) Act, 1946, and they came into force with effect from the 28th of May, 1964. The petitioners' case is that even after the coming into force of the Standing Orders, the employees of the Corporation continued to get leave and holidays on the

Central Government Scale. On the 12th of December, 1969, the Corporation by a notice notified to enforce leave and holidays said to have been curtailed in some regards by the award of the Industrial Tribunal, Bihar, in Reference No. 52 of 1966 and Reference No. 6 of 1968. According to the petitioners' case, they then learnt about the award, made enquiries and came to know that the Government of Bihar had made the references by their notifications dated the 15th of November, 1966, and the 30th of January, 1968. Their case further is that before the Industrial Tribunal, Heavy Engineering Mazdoor Union (opposite party no. 4) and Hatia Project Workers' Union (opposite party no. 5) appeared and made representation on behalf of their members. The said two Unions do not represent all the employees; not even a substantial number of them and most of the employees, especially, the office staff, technical and supervisory personnel are not members of any Union. Neither the State Government nor the Industrial Tribunal gave any notice of the references and the Proceeding to the workmen, who are not members of any Union but are likely to be affected by the result of the award. The award was made in violation of Rule 22(2) of the Industrial Disputes (Bihar) Rules 1961, hereinafter referred to as "the Bihar Rules". The petitioners were thus deprived of an opportunity to represent their case before the Tribunal which materially prejudiced them. A copy of the award dated the 30th of September, 1969 (Annexure 3) was published on the 3rd of November, 1969. Since the Corporation was trying to enforce that award, the petitioners obtained a rule from this Court against the opposite parties to show cause why the said award should not be set aside. Cause has been shown in this case on behalf of the State of Bihar (opposite party no. 1) and the Heavy Engineering Corporation Limited (opposite party no. 3) at the time of the hearing of the writ application. In the counter-affidavit filed on behalf of opposite party no. 3 it is stated that opposite party no. 5 is a union recognised by the Management, it is affiliated to Indian National Trade Union Congress and opposite party no. 4 is also a duly registered Union. These Unions duly represented the workmen from the very beginning of the present dispute regarding leave and holidays up to the Supreme Court. Against the impugned award passed by the Industrial Tribunal, opposite party no. 4 filed C.W.J.C. No. 1618 of 1969 in this Court which was withdrawn. It may be mentioned here that during the course of argument our attention was drawn to another writ application having been filed by the workmen of the Heavy Engineering Corporation represented by the Union (opposite party no. 4). This was C.W.J.C. No. 946 of 1970 This came up for admission before a bench of this, Court on the 1st of May, 1970, and it was dismissed. In the order it was stated that learned counsel for the petitioner submitted that C.W.J.C. No. 1618 of 1969 was withdrawn because the petitioners were advised to move the Supreme Court of India for special leave to appeal under Article 136 of the Constitution. Perhaps it was directly from the award itself but special leave was not granted. Therefore, another writ application was filed and it was argued that C.W.J.C. No. 411 of 1970 had been admitted and, therefore, C.W.J.C. No. 946 of 1970 should also be admitted but the argument was not accepted and C.W.J.C. No. 946 of 1970 was dismissed in limine. The

present writ application is C.W.J.C. No. 411 of 1970, which was admitted on the 20th of February, 1970.

2. In the counter-affidavit of opposite party No. 3 it is further stated that the notifications of the State Government making references were published in the Bihar Gazette and the present petitioners having been satisfied by the sponsoring of the cause of the workmen by the two Trade Unions did not choose to be a party as required u/s 36 of the Industrial Disputes Act, hereinafter referred to as "the Act". It is further asserted in the counter-affidavit that the present writ application is nothing but a manoeuvre on the part of the workman to reagitate the dispute set at rest by the High Court as also by the Supreme Court. In Paragraph 12 of the counter-affidavit the statement is:

That the Hatia Projects Workers Union and the Heavy Engineering Mazdoor Union held meetings from time to time for collecting funds from the workmen of the Heavy Engineering Corporation Limited which the appropriate Government referred the dispute to this Industrial Tribunal, Bihar, as stated above. It is submitted that the two Unions also apprised the workmen in general in respect of dispute covering leave and holidays by addressing General Meetings of the workmen stated above.

3. The only point urged on behalf of the petitioners in this case by Mr. Ranen Roy is that the petitioners, even though they were not members of any Union, were parties to the reference. Hence a notice to them was necessary either on the general principles of natural justice or in view of the specific provisions contained in Rule 22(2) of the Bihar Rules. No notice was given to them and, therefore, the award made without giving them any opportunity of having their say in the matter is illegal and void and must be quashed. It may be stated at the outset that this point was not available to opposite party no. 4 when it moved this Court in a writ application filed earlier or in the other filed later than the present one. It may also be stated that no direct authority, either of the Supreme Court or of any High Court, was cited before us at the bar to cover the point at issue. The case seems to be of first impression and, therefore, with the assistance of learned counsel of the parties, we have given our due thought and consideration to it and have arrived at the conclusion to be stated hereinafter.

4. The two notifications in this case (Annexures 2 and 2/1) in the preamble used the language:

Whereas the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of Heavy Engineering Corporation Limited, Ranchi, and their workmen represented by Hatia Project Workers Union, Ranchi.....

From the language of the notifications, therefore, it appears and this fact does not seem to be in dispute, that cause was sponsored by the worker's Union (opposite party no. 5). On a charter of demand made by them on behalf of the workmen, the two references were eventually made. It would appear from the

order dated the 16th of November, 1966 (Annexure 4) and the order dated the 1st of February, 1968 (Annexure 5) made by the Presiding Officer of the Industrial Tribunal that on receipt of the references they were registered and notice was directed to be issued to the parties asking them to submit their written statements within two weeks from the date of the receipt of Government notification. They were also directed to submit names of their representatives in Form E of Rule 34 of the Bihar Rules. Later on the Mazdoor Union appeared before the Tribunal and claimed a separate representation to represent their members. This fact has been stated before us at the time of argument in answer to our query as to how opposite party no. 4 came before the Tribunal.

5. The industrial dispute in question within the meaning of Clause (k) of Section 2 of the Act was an industrial dispute between the employers and their workmen. Cause was sponsored by opposite party no. 5 not for a particular class of workmen but, as it appears from the terms of the reference it was on behalf of all the workmen. The questions were referred in each of the references and the questions would show that adjudication was sought for the workers of Heavy Engineering Corporation and not for any particular class or members of a particular Union. u/s 36 of the Act any workman of the Corporation in the two reference cases was entitled to be represented in one of the modes prescribed by Clause (a), (b) or (c) of Sub-section (1) of Section 36. Opposite party no. 5 having sponsored the cause, it appears, was trying to represent the cause of all workmen but opposite party no. 4 intervened and claimed to represent the cases of those workmen who were its members. It is not stated in the writ application that there is any other Union of the workers of the Corporation but this fact seems to be admitted that there are number of workmen who are not members of either Union. The petitioners belong to that category. They, however, on publication of the notification of the reference in the Gazette either in the year 1966 or in the year 1968 did not ask for their separate representation as they were entitled to ask under Clause (c) of Sub-section (1) of Section 36 of the Act. Under Rule 13 of the Bihar Rules the party representing workmen involved in an industrial dispute has to forward a statement of its demands to the Conciliation Officer and the Labour Commissioner in the manner prescribed by Sub-rule (1) or (2), as the case may be. Eventually when there is a reference and the proceeding before the Tribunal starts. Rule 14 of the Rules comes into play and it reads as follows:

(1) Where the State Government refers any case for adjudication to a Labour Court or Tribunal, it shall send to the Labour Court or Tribunal concerned in the industrial dispute a copy of every such order of reference together with a copy of statement of demand received by it under Rule 13.

(2) Within two weeks of the receipt of the statement referred to under Sub-rule (1) both parties shall file their respective written statements with the Labour Court or Tribunal as the case may be, and simultaneously forward copies thereof to the other party:

Provided that where the Labour Court or Tribunal, as the case may be, considers it necessary it may extend the time-limit for the filing of written statements by any period.

(3) The Labour Court or Tribunal as the case may be shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication:

Provided that the Labour Court or Tribunal as the case may be may, for reasons to be recorded in writing fix a later date for the first hearing of the dispute.

(4) The hearing shall ordinarily be continued from day-to-day and argument shall follow immediately after the closing of evidence.

It would thus be seen that in terms no duty is cast upon the Industrial Tribunal to give a notice to the parties concerned in an industrial dispute asking them to file their written statements. It is the duty of the State Government to send to the parties concerned a copy of the order of reference together with a copy of statement of demand received by it. It is not clear when the Government makes a reference at the instance of a particular Union, whether it is bound to send notice of the order to other Unions or to other workmen who are not members of any Union: if so, how. The place and time of hearing is fixed by the Tribunal under Rule 15, which reads as follows:

Subject to the provision contained in Rules 13 and 14 the sitting of a Board, Court, Labour Court, Tribunal or an Arbitrator shall be held at such time and places as the Chairmen. Presiding Officer or Arbitrator as the case may be may fix and the Chairman, Presiding Officer or the Arbitrator as the case may be shall notify the parties of the same in such manner as he thinks fit.

The places and time of hearing fixed by the Tribunal have to be notified to the parties in such manner as the Presiding Officer may think fit. This rule also does not make a specific reference to Rule 22, which says:

(1) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or Arbitrator and such persons are members of a trade union or association the service of notice on the Secretary or where there is no Secretary on the principal officer of the trade union or association shall be deemed to be service on such persons.

(2) Whether there are numerous persons as parties to any proceeding before Board, Court, Labour Court, Tribunal or Arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court, Tribunal or Arbitrator, as the case may be, shall where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice exhibited as mentioned in Sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

The marginal note of Rule 22 is: "Manner of service in the case of numerous persons as parties to the dispute". The questions which fall for determination are the following--(1) whether the petitioners were parties to the reference? (2) if so, whether any notice was given to them? and (3) what is the effect of not giving any notice to them either individually or generally in terms of Sub-rule (2) of Rule 22 of the Bihar Rules.

6. Mr. Ranen Roy on the basis of a decision of the Supreme Court in the case of (1) *The Manager, Hotel Imperial Vs. The Chief Commissioner and Others*, and an unreported Bench decision of this Court in (2) C.W.J.C. Nos. 844 and 845 of 1968, decided on the 21st of May, 1971, submitted that parties to the reference and consequently the proceeding pending before the Tribunal are the employers on one hand and the entire body of workmen on the other. As pointed out by the Supreme Court, the Union is not a party. It is merely there to represent the workmen. The parties are the workmen. I am inclined to think that the submission made by learned counsel in this regard is correct. On the facts of this case, it is difficult to hold that the workmen of the Corporation were not parties to the reference. The questions referred for adjudication were meant to govern the service conditions of all the workmen; not of any particular class or only of those who were members of the Union or Unions. It is not possible to say that the petitioners were not parties to the reference and hence they have no right to make any grievance of that the award will not be binding on them. u/s 18(3)(a) of the Act award is binding on all parties to the industrial dispute. I do not see for the purpose of this point any appreciable difference between the expressions "parties to the dispute" and "parties to the reference". "Parties to the dispute" were the entire body of workmen whose cause was sponsored by a particular Union. When reference were made they were parties to them as they were for adjudicating their service conditions. The question, however, is: was it incumbent upon the Tribunal to give them any separate notice in the manner provided in Rule 22(2) of the Bihar Rules or on the principles of natural justice? In the very scheme and the nature of raising of industrial disputes, making of references and their adjudication, it seems to me that the correct, reasonable and legitimate view to take is that when an industrial dispute is raised on behalf of the entire body of workmen and for their benefit, they must be deemed to have knowledge of the reference when the notification is published in the Gazette. The publication of the notification must be held to be a constructive notice to them. It does not seem obligatory for the Government to forward copies of orders of references to all the Unions if there be more other than the ones which have raised the dispute or individually or collectively to other workmen who are not members of any Union. It is not possible to do so nor any rule casts this obligation on the Government. When reference is made after publication of the notification in the Gazette, it is open to all types of workmen to approach the Tribunal for their separate representation if they so chose to do in accordance with Clause (a) (b) or (c) of Sub section (1) of Section 36 of the Act. I some workmen, who are not members of the Union which is representing their members before the Tribunal,

do not chose either to file written statements before the Tribunal or to claim a separate representation u/s 36 of the Act, to me it appears that they cannot be heard later on to say that the Tribunal has committed any error by not giving them any separate notice under Rule 15 of the Bihar Rules or has violated any principles of natural justice. Rule 22 prescribes the manner of service of notice and if it could be held either on the express language of any Rule of the Bihar Rules or on the principles of natural justice that a duty was cast upon the Tribunal to give notice of the reference to the petitioners, undoubtedly Sub-rule (2) of Rule 22 would have come into play. But on a careful consideration of the matter and the provisions contained in the Act and the Rules, I have come to the conclusion that it was not obligatory for the Tribunal to give any separate notice to the petitioners in accordance with Rule 22(2) of the Bihar Rules or otherwise.

7. In this writ application Mr. J. Krishna appeared for opposite party no. 4, which opposite party had made repeated attempts in this Court as also in the Supreme Court to challenge the award. The said opposite party in this writ application joined hands with the petitioners to assail the award. Mr. Krishna adopted the argument of the petitioners. On the facts and in the circumstances of this case, I am inclined to think, apart from the question of constructive notice, that the petitioners were aware of the references made in the years 1966 and 1968. Their cases were adequately represented by ore Union or the other, specially, as it appears to me, by opposite party no. 4. Their interests were adequately safeguarded. They did not think it necessary to file any separate written statement or to have a separate representation u/s 36 of the Act, and, finding opposite party no. 4 unsuccessful in its repeated attempts to challenge the award, they have come forward to this Court to take the plea of the absence of notice to them. I am of the view that either in terms of the Bihar Rules or on the principles of natural justice it was not obligatory for the Tribunal to give any separate notice to the petitioners under Rule 15 or in accordance with Rule 22(2) of the Bihar Rules or otherwise. That being so, in my opinion, they are not entitled to assail the award on the only ground urged on their behalf by their learned counsel.

8. Great reliance was placed by Mr. Ranen Roy on the decision of Shah, J. (as he then was) in the case of (3) Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay, . His decision was modified in Letters Patent Appeal by a Bench of the Bombay High Court reported in (4) Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay, . But the main ratio of the case which has been pressed into service is to be found in the judgment of the learned single Judge reported in the Labour Law Journal. It would be noticed that according to the Bombay Rules on an industrial dispute being referred to for adjudication u/s 10 it was the duty of the Tribunal to cause notice to be served on the parties in the form prescribed under the Rules. The relevant rule is quoted at page 310 of the Labour Law Journal Volume. The Tribunal gave notice in accordance with this rule. Certain award was made by the Tribunal although the petitioners had not appeared before the Tribunal the matter went up to the Appellate Tribunal. The

Appellate Tribunal did not issue any notice to them and without hearing them or giving them an opportunity of being heard modified the award. It was held by the Bombay High Court that the principles of natural justice were violated as the Appellate Tribunal had no power to modify the award without issuance of notice to those who were parties before the Tribunal. In my opinion, this case is clearly distinguishable. The matter arose with reference to the power of the Appellate Tribunal; following the rule, the Industrial Tribunal had given notice to the petitioner. It was, therefore, clear to his Lordship Mr. Justice Shah that the Appellate Tribunal could not modify the award without giving any notice to him. It would be found mentioned at page 311, column 2, that no opinion was expressed by the learned Judge upon the question, whether for the purposes of the proceedings before the Industrial Tribunal the petitioner was duly represented by the Union of workmen, he having failed to make any representation separately before that Tribunal, or whether the proceedings were ex parte. This question has fallen for our decision in the cases. In my opinion, when the petitioners did not ask for a separate representation of their own, they must be held to have been duly represented by the two Unions which were quite competent not only to raise the dispute but also to look after the interests of all workmen irrespective of the question whether they were members or not. It is not alleged in the writ application that the two Unions or either of them were or was adverse to the interests of the petitioners in any way or did not adequately safeguard their interests or that the petitioners had a separate case to represent. I am, therefore, of the opinion that this writ application cannot succeed.

9. Before I close the discussion on the point of notice, I would like to observe that it would be better for the Tribunal or the Courts, to whom the reference is made u/s 10 of the Act, to avoid any technical dispute to take recourse to the general method of service of notice prescribed in Rule 22(2) of the Bihar Rules. That will obviate any objection of the kind raised in this writ application. It may also be stated, as we were informed at the bar, that Central Government Tribunals generally take recourse to the issuance of such notice under Sub-rule (2) of Rule 20 of the Central Rules which is identical to Rule 22(2) of the Bihar Rules but other Tribunals do not do so. If this point were to succeed in one case it will put in jeopardy many awards made without following this rule I have, therefore, thought just, reasonable and legitimate to take the view expressed by me above, yet I reiterate that no harm will be done if the general procedure of service of notice by hanging a copy of the same on the main entrance of the establishment is followed.

10. Another point which was faintly urged on behalf of the petitioners may just be recorded to be rejected. The argument was that in this particular case the reference ought to have been made by the Central Government to a National Tribunal in accordance with Sub-section (I-A) of Section 10 of the Act and not by the State Government. It is undisputed that the State Government was the appropriate Government to make the reference. It was for the Central Government to decide whether the facts of this case were such as to warrant the

exercise of their power under Sub-section (1-A) of Section 10 of the Act. No representation seems to have been made to the Central Government in this regard for making a reference to the National Tribunal. The reference made by the State Government on this ground cannot be held to be invalid. For the reasons stated above, this application fails and it is accordingly dismissed. But in the circumstances there will be no order as to costs.

Akbar Husain, J.

I agree.