

(1958) 09 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 133 of 1958

Re Express Newspapers (Private) Ltd. APPELLANT
Vs
First Labour Court West Bengal and Others RESPONDENT

Date of Decision : 08-09-1958

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104
Industrial Disputes Act, 1947 — Section 10, 2

Citation : AIR 1959 Cal 265 : 64 CWN 37 : (1959) 2 ILR (Cal) 517 : (1959) 1 LLJ 600

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : P.K. Sanyal and T. Basu, for the Appellant; Masud, for the Respondent

Judgement

D.N. Sinha, J.—The applicant before me is Messrs, Express Newspapers (Private) Ltd. It is a company incorporated under the Indian Companies Act and has its head office situated in Madras. It has a small branch office in Calcutta. At the branch office in Calcutta, there were four workmen including the respondent No. 4, Ram Deo Dubey. The company dismissed the respondent No. 4 from its service on the 17th day of September, 1956. By an order dated 29-10-1957, the Government of West Bengal referred an alleged industrial dispute to the adjudication of the First Labour Court, Calcutta. The relevant part of the order of reference is as follows :

"Whereas an. industrial dispute exists between Messrs. Express Newspapers (Private) Ltd., 7 Lyons Range, Calcutta and one of their workmen Sri Ram Deo Dubey represented by the Calcutta Lower Grade Employees" Union, 249 Bowbazar Street, Calcutta relating to the under-mentioned issues the Governor is pleased hereby to refer the said dispute to the First Labour Court constituted under Notification No... .. dated 5-4-1957 for adjudication."

2. There were two issues referred, the first being as to whether the dismissal of the respondent No. 4 was justified, and the second being as to what relief he was

entitled to. Before the Industrial Court, a preliminary objection was taken on behalf of the company, namely, that the dispute was not an industrial dispute but was an individual dispute and the Union which purported to represent the respondent No. 4 had no locus standi because it was not an Union of Workmen of the company and no workman except respondent No. 4 was at any time a member thereof. The Industrial Court considered the matter and overruled the preliminary objection and upon merits held that the dismissal was not justified. It ordered reinstatement of respondent No. 4 and directed the company to pay him two months' wages as compensation. This award dated 16-4-1958, is challenged before me. The point taken is that the order of reference is invalid inasmuch as the dispute was an individual dispute between the company and one of its workmen, and the Union which purported to represent the workman concerned, had no locus standi. The way that it has been put before me is as follows : As I have stated above, the petitioner company has its registered office situated in Madras. At Madras, the workmen employed by the company have got a registered Trade Union known as the Express Newspapers Limited Employees' Union. In the Calcutta branch, there are four workmen employed including the respondent No. 4, but there is no Union. The Calcutta Lower Grade Employees' Union is not an union of workmen of the petitioner company. It is an Union of darwans, peons, bearers and similar lower grade employees of all kinds of firms, banks etc., in Calcutta. As I have stated above, only the respondent No. 4 is a member of this Union and no other workman belonging to the petitioner company, either in Calcutta or Madras, has anything to do with this Union. In the order of reference, the respondent No. 4 is said to be represented by the Calcutta Lower Grade Employees' Union. The question is whether this Union can represent the workman concerned, or whether such representation would transform the individual dispute between the company and one of its workmen into an industrial dispute between the company and its workmen. By now, it is firmly settled that an individual dispute between an employer and one of his workmen, is by itself not an industrial dispute which can be referred u/s 10 of the Industrial Disputes Act, but such an individual dispute might be transformed into an industrial dispute, provided that the cause of the particular workman concerned is taken up by a majority of workmen concerned in the particular industrial establishment, or by an Union of such workmen. This aspect of the matter has been dealt with by me in Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another, . It is unnecessary here to refer to all the decisions which have been dealt with in my judgment. I might at once refer to the Supreme Court decision in D.N. Banerji Vs. P.R. Mukherjee and Others, , wherein Aiyer, J. said as follows :

"The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest such as wages, bonuses, allowances, pensions, provident funds, number of workmen, hours per week,

holiday and so on. Even with reference to business that is carried on, we would hardly think of saying that there is an industrial dispute where an employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting, their dispute and settling them, on the basis of the theory that in unity is strength, and collective bargaining has come to stay, a single employee's case may develop into an industrial dispute when, as often happens, it is taken up by a trade union of which he is a member, and there is concerted demand by employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise in such a manner as to cover the industry as a whole in a case where grievance, if any, passes from the region of individual complaint, into a general complaint on behalf of all the workers in the industry. Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a target-scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between a particular employer and workman."

3. It must be remembered that the word "industrial dispute" has been defined in Section 2(k) of the Industrial Disputes Act. An "industrial dispute" means any dispute or difference between employers and employees, 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 particular person. The question is as to whether an Union can take up the cause of a workman and transform it into an industrial dispute if the Union that does so is wholly unconnected with the particular employer or the industry concerned, or where no workman of the employer or the industry concerned, is a member thereof, or if only a very small and insignificant number of its workmen are connected with such Union. I do not find any authority which is absolutely decisive on the point. I must however, deal with certain decisions which have been cited before me. The first case to be considered is a decision of Kapur, J. in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . The facts in this case were as follows : One Tajammul Hussain was employed as a Lino-operator by the appellant company. He was dismissed on allegations of incompetence. It was alleged that his dismissal was welcome by his co-workers and

other workmen in the employ of the appellant company and they did not make a grievance of it nor did they espouse his cause. His case was however taken up by the U. P. Working Journalists" Union, Lucknow with which the appellant company had no connection whatsoever. The U. P. Government made a reference to the Industrial Tribunal on 3-6-1953. The reference was of an industrial dispute stated to have arisen between the concern known as Newspapers Ltd., Allahabad and its workmen represented by the U. P. Working Journalists" Union, Lucknow, the dispute being as to whether the service of Tajammul Hussain Lino-operator, was

wrongfully terminated by the management of the company, In stating the facts the Beamed Judge said as follows:

"The case of respondent No. 3 was not taken up by any Union of workers of the appellant company nor by any of the Union of workmen employed in similar or allied trades but the U. P. Working Journalists" Union Lucknow, with which the respondent No. 3 had no connection whatsoever took the matter to the Conciliation Board, Allahabad."

4. It is argued on the strength of this that it is possible for an Union of workmen employed in similar or allied trades to represent a workman, thereby transforming an individual dispute into an industrial dispute. In my opinion, the learned Judge was not here laying down the law, but only stating the case made by the parties. On the other hand, in deciding the point raised in the case, the learned Judge concluded as follows :

"It may also be noted that the Notification issued by the U. P. Government on 3-1-1953, already quoted, proceeds on the assumption that a dispute exists between the employer and his workmen. The points of dispute in the reference, however, comprise wrongful termination of the services of only Tajammul Hussain, a Lino-operator. The words used in the first part of the Notification show that the Government was labouring under the misapprehension that this dispute was between the employer on the one hand and his workmen on the other, which in fact it was not. Tajammul Hussain could not be termed workmen (in the plural) nor could the U. P. Working Journalists" Union be called his "workmen," nor is there any indication that the individual dispute had got transformed into an industrial dispute. The very basis therefore of the reference was bad and must be held to be so."

5. It will therefore appear that the learned Judge, held that the U. P. Working Journalists" Union, which was unconnected with the employer, could not represent the. employee so as to transform an individual dispute into an industrial! dispute.

6. The next case to be considered is another decision of the Supreme Court, Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, . Ayyar, J. stated as follows :

"The preponderance or judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, 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-matter of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen."

7. It will be observed that Ayyar, J. speaks about "the Union" and not an unspecified Union. I have already cited above the decision of the Supreme Court which has made clear the basic reason why an individual dispute could be taken up by an Union and thereby transform the same into an industrial dispute. The Industrial Disputes Act is a legislation intended to ensure industrial harmony when an individual case is taken up by a class of workmen, then it becomes an industrial struggle and loses its limited scope. But I find no justification in holding that a workman's cause can be taken up by an Union unconnected with the employer or the industry concerned, and still pass the test whereby an individual dispute can be transformed into an industrial dispute. The employer is not concerned with the workmen who are not in his employ. He cannot possibly have an industrial dispute or any dispute with persons who are not in his employ. The real test appears to me to be as to whether the majority, or a large portion of the workmen employed in the particular industry, are concerned in the dispute or not. Where the Union is of the workmen employed in that particular industry, it may be presumed that when the Union takes up the cause of an individual workman it signifies a concerted action on the part of the workmen who are members of that Union. But I do not see by what means it is possible for an Union of workmen unconnected with the particular industry concerned, to take up such a cause and transform it into an industrial dispute between a particular employer and his workmen. On the other hand, I do not wish to confine the principle unduly. I do not say that under no circumstances could a workman be represented by an Union which is not the Union of the Workmen of that particular industry concerned. If a large number of workmen of a particular industry become members of an Union which is not, strictly speaking, the Union of the industry or the establishment concerned, the principle might be extended. The whole point is as to whether the employer is fighting a dispute with a large number of his workmen. Until that test is passed, an individual dispute cannot be transformed into an industrial dispute.

8. From this point of view, let me consider the finding of the Labour Court in this case. The learned Judge has dealt with it from two points of view. Firstly, he says that according to the evidence adduced on behalf of the Union, the workman's cause was taken up by the Calcutta Lower Grade Employees' Union which counts as its members, Darwans, Peons, bearers and like menials, belonging to firms, banks and offices in Calcutta. From this he concludes that the Union of Workmen employed in similar or allied trades has taken up the cause of this workman and so it could not be held that the Union was not competent to represent the workman concerned. The learned Judge refers to the case of *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . It is obvious that the learned Judge was referring to the extract from the judgment which I have quoted above. As I have already pointed out, that extract sets out the case made by the parties and was not a decision upon the point raised. In other words, it is not the established law that an Union of workmen employed in similar or allied trades can take up the cause of a workman and so transform an individual dispute into an industrial

dispute. As I have stated above, the matter is dependent on the facts of each case, the basic fact always being as to whether a majority or a large number of workmen belonging to the employer or the industry concerned, can be said to have become involved in the struggle. Then again, I do not see how the learned Judge has come to the conclusion that the particular Union with which he was dealing was an Union in a "similar or allied trade". The Company carries on business in printing and publishing newspapers periodicals etc. There is not a word in the evidence or anywhere else to show that workmen in trades similar to that carried on by the Company were members of this Union, either in large number or at all, excepting of course the respondent No. 4. Secondly, the learned Judge holds that it is for the employer to prove that the Union was not representative and that the workmen in the establishment were not members of that Union. The decision upon which reliance has been placed Management of The Management the Hindustan Times Ltd., New Delhi Vs. The Chief Commissioner, Delhi and Others, . In that case, a Company had dismissed a sub-editor. The sub-editor raised a dispute and the matter was referred to an Industrial Tribunal as an industrial dispute. The sub-editor was a member of the Delhi Union of Journalists and was represented by that Union. In dealing with this case, the learned Judge forgot to look into the facts. As stated in the reported judgment, the Hindustan Times was employing 78 working journalists of whom 73 were members of the Delhi Union of Journalists and of a staff of 50 working journalists, 48 were members of the said Union. This Union had taken up the cause of the dismissed employee. It is in the back ground of these facts that it was held that once such an Union had taken up the cause of the work man and if the employer proposed to establish that the Union did not really represent the views of its members, then it was for the employer to prove it. It was not held that it was always for the employer to prove the facts relating to such representation. In such a case, I think the ordinary rule of throwing the burden or onus should be followed, namely as to who should fail if no evidence is given. When a workman is represented by an Union of the work men of the employer or a large portion thereof, & if the employer alleges that the Union does not represent the views of the majority of the workmen or a large portion thereof, then in the first instance it would be for him to prove the same. But if it is admitted or not disputed that the Union is not an Union of the workmen of the particular employer or industry and if there is evidence on record, whether adduced by the employer or the employee, as to the constitution of such an Union, then that evidence cannot be ignored. In this particular case, it has nowhere been stated, not even in the evidence adduced by the workmen, that a majority of work men of the employer Company were members of this Union. In fact, it seems to me on the materials that it is more or less admitted that only one work man belonging to the Company is a member thereof and that is respondent No. 4 himself. On the proved fact that this Union has for its members workmen belonging to various firms, banks, etc., the learned Judge fell into an error in deciding the case on the ground that the employer had failed to discharge his onus of showing that the Union was incapable of representing the workmen so as

to make it an industrial dispute. The result is that upon this very fundamental question the learned Judge has come to an erroneous conclusion which cannot be supported. This Union as constituted cannot represent the workmen concerned so as to transform a dispute between the workman and the Company which employs him, from an individual dispute into an industrial dispute. Only one workman of the Company is a member of this Union and there is no possibility of the Company being faced with an industrial dispute with its workmen in general, as a result of the facts and circumstances as they have happened in this case. The result is that this Award cannot be upheld and this Rule is made absolute and a writ in the nature of Certiorari is issued quashing the same. No order as to costs.