
(1962) 11 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 152 of 1962

River Steam Navigation Co. Ltd. and Another	APPELLANT
Vs	
Presiding Officer, Labour Court and Others	RESPONDENT

Date of Decision : 26-11-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Industrial Disputes Act, 1947 — Section 10, 10(1), 17, 17A(3), 17A(5)

Citation : (1962) 11 GAU CK 0005

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J.; C.S. Nayudu, J

Bench : Full Bench

Advocate : B. Das and K.K. Banerjee, for the Appellant; H. Goswami, K.P. Sen, S.K. Ghose and K.P. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, C.J.—This is a petition under Article 226 of the constitution by the River Steam Navigation Company Limited and India General Navigation and Railway Company Limited for a direction in the nature of a writ of certiorari or mandamus, quashing the Notification issued by the State Government u/s 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), dated the 4th November, 1961. The Petitioners have further prayed for a writ in the nature of mandamus restraining the Opposite parties Nos. 1 to 4, viz., the Presiding Officer, Labour Court, Assam, the workmen (numbering 70) of Karimganj Railway Siding Ghat, P. O. Karimganj, represented by R.S.N. and I.C.N. Railway Co., Ltd., Workers' Union, Cachar Branch, P. O. Karimganj, Sri Rampratap Singh and the State of Assam.

2. Sri Rampratap Singh (Opposite party No. 3) employed various persons for handing cargo at the Karimganj Railway Siding Ghat. The Petitioners, River Steam Navigation Co., Ltd., and India General Navigation and Railway Co., Ltd., hereinafter called the Steamer Companies, carry on business as carriers for reward within the jurisdiction of this Court and the Petitioners' case is that Sri

Rampratap Singh is acting as their Labour Contractor since May, 1959 for Karimganj Railway Siding Chat.

3. On the 30th May, 1956, the State Government by a Notification referred certain disputes between the worriment of Karimganj Steamerghat, represented by Karimganj Dock Mazdoor Union to Sri Radhanath Hazarika, who has then the Judge of the Industrial Tribunal. In this reference the other party was S.C. Dutta, who was then the contractor employed by the present Petitioners under an agreement dated the 31st August, 1938. Broadly, the matters, which were referred to the Judge of the Industrial Tribunal for adjudication referred to maundage rates of handling cargo, housing and medical facilities, leave rules to which the workers claimed to be entitled, and also the arrangement, if any, that should be made by the contractor for the improvement of housing and medical facilities. The Judge, Industrial Tribunal, issued notice to the present Petitioners. They protested against the issue of the notice on the. ground that they were no parties to the reference and as such the Tribunal had no right to require them to file any written statement. The Tribunal accepted this contention.

In the meantime, on the 30th June, 1956, S. C. Dutta died and his son, Sunirmal K. Dutta was appointed as the Contractor by the present Petitioners. On the 16th July, 1956, the Joint Secretary of Karimganj Dock Mazdoor Union wrote to the Labour Officer, Cachar, suggesting that the workers, who were employees of the present Petitioners should be directly employed by them and not by Contractor.

There were conciliation proceedings arising out of this letter to the Labour Officer, in which the present Petitioners did not participate. Meanwhile, on the 11th August, 1956, a fresh notification WETS issued by the State of Assam amending the earlier notification and adding the management, i.e. the present Petitioners as the second party to the dispute. Subsequently, another Notification was issued on the 4th September 1956, by which the following issue No. (e) was added to the reference, mis issue reads as follows:

(e) Is the Union justified in its demand for abolition, of the post of Labour Contractor and direct employment of workers by the Co.

This Notification was challenged by means of a petition under Article 226 of the Constitution. The matter came up before a Division Bench of this Court and ins-Bench on the 18th July, 1957 upheld the Notification, we shall have to deal with this case in greater detail at a later stage. Thereafter, the matter went up to the Judge, Industrial Tribunal. In the meantime, as Sri Kaonanath Hazarika had ceased to be the Judge of the Industrial inbunai, the matter came up before Sri Ram Labhaya, who was then the President of the Industrial Tribunal. It should be pointed out that the Government issued a fresh notification on the 6th January, 1958 by which the disputes, which had been referred by the earlier Notification to Sri Radhanath Hazarika, were referred to Sri Ram Labhaya. He gave his award on the 5th July, 1958. This award was published on the 20th August, 1958 in the Assam Gazette. Thereafter, a dispute was again raised by the workers of the

Karimganj Railway Siding Ghat for direct employment and conciliation proceedings were started.

The workers were represented in the conciliation proceedings by the Secretary, R.S.N, and I.G.N. Workers' Union, Cachar Branch, Karimganj. Before the Conciliation Officer the Secretary of the Workers' Union and the then Labour Contractor Sri Rampratap Singh were present and a settlement was arrived at on the 12th September, 1959. The contention of the Petitioners is that this settlement was signed by the Secretary of the Workers' Union, the contractor Sri Rampratap Singh and the Conciliation Officer. The representative of the Petitioners was only a witness- thereto. The workers had carried on their work in accordance with the terms of the settlement.

4. On the 4th November, 1961 the State of Assam issued another Notification u/s 10 of the Industrial Disputes Act, 1947, hereinafter called the Act, the validity of which has been challenged by means of the present petition. It is necessary to quote the Notification:

NOTIFICATION

Dated, Shillong, the 4th November, 1961. No. GLR 540/61/10- Whereas an industrial dispute has arisen in the matter specified in the schedule below between:

(1) The management of R.S.N, and I.G.N, and Rly. Co., Ltd., P. O. Silchar, Dist. Cachar and Shri Rampratap singh, Labour Contractor, R.S.N, and I.G.N, and Rly., Co., Ltd., P. O. Silchar, Dist. Cachar.

And

(2) The workmen, (numbering 70) of the Karimganj, Railway Siding Ghat, P. O. Karimganj, Dist. Cachar, Represented by the R.S.N, and I.G.N, and Rly., Co., Ltd., -Workers' Union, Cachar Branch, P. O. Karimganj, Dist. Cachar.

And whereas it is considered expedient by the Government of Assam to refer the dispute for adjudication to a Court constituted u/s 7 of the Industrial Disputes Act, 1947 (Act XIV of 1947)

Now, therefore, in exertion of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), as amended, the Government of Assam is pleased to refer the said dispute to the Presiding Officer of the Labour Court appointed under the provision of the said Act.

SCHEDULE

Whether the demand for direct employment of the Workers at Karimganj Railway Siding Ghat is justified."

(2) If not, what other relief the workers of Kanm-gaji Siding Ghat are entitled to?

sd/- D. Das. Secretary to the Government of Assam, Labour Department.

The matter came up before a Division Bench of this Court and as the contention of the Petitioners was that the decision of this Court in *Rivers Steam Navigation CO; "Ltd. v. Radha"nath Hazarika* Civil Rule No. 181 of 1956, D/- 18-7-1957: (AIR 1960 Gau 39), challenging the "validity of the earlier notification of the Government, is not correct, a Special Bench was constituted to decide this matter.

5. Mainly, the arguments, which were addressed before this Court in the earlier case, have been reiterated, the first contention of the applicants is that the dispute, which had been referred by means of the present Notification does not come within the definition of "industrial dispute" u/s 2(k) of the Act, and as the dispute does not come under the definition of "industrial dispute", the Government had no jurisdiction u/s 10 of the Act to issue any Notification in respect of the said dispute. The ground on which it is contended that the dispute does not come within the definition of "Indus- "trial dispute" u/s 2(k) of the Act is that there is no direct contract of employment between the /u workers and the present Petitioners, and that Sri Ram-pratap Singh, with whom the workers have entered into contract, is the employer of these workmen, and thus the 70 workers have no right to raise any dispute as against the present Petitioners, who are not their employers. Any dispute raised by them cannot be regarded as an "industrial dispute" within the meaning of the words under the Act.

Secondly, it is urged that the award of Sri Ram labhaya is still in force. It has not been validly terminated u/s 19 of the Act, and so long as the award is In force, the finding of the Tribunal that there is no direct contract of employment between the present Petitioners and the workmen is binding on the parties, to the award. It is not thus open to the workers to, raise this question any further and as, on the findings given by the tribunal In its earlier award, there is no relationship of employer and employee between the Petitioners and the workmen, the dispute Is not covered by the definition of the "industrial dispute" In the Act. It was thirdly contended that the settlement arrived at before the Conciliation Officer Is funding on the parties to that settlement and in view of the agreement embodied in the settlement, it is not open to the workers to say that they are the employees of the Petitioners and not of Sri Rampratap Singh.

6. Counter-affidavits have been filed by the secretary of the K.S.N, and I.G.N, and Rly. Co., Ltd. workers" Union, Cachar Branch on behalf of the 70 workmen and also by Sri Rampratap Singh. The counter-affidavit filed by Sri Rampratap Singh supports the contention of the Petitioners. In the counter-affidavit, the Secretary of the Workers" Union has alleged that the award given by Sri Ham Labliayu was given a go-byo by both the parties. None of the parties to the reference accepted the award and thus, it ceased to be operative, it is further contended that the award has been validly terminated by a proper notice contemplated by Section 19(6) of the Act. for the purpose of the disposal of the present petition, It is not necessary to go into the question whether the award has or has not been properly terminated u/s 19(6) of the Act. It should also be

pointed out that the Union has stated that the workers were In fact the employees of the Steamer Companie"s. The main point canvassed before us is that the dispute, which has been referred to the Presiding Officer, Labour Court, is not covered by the definition of the "industrial dispute".

7. Section 2(k) of the Act defines "industrial dispute-as meaning 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 person. Before the definition is attracted, three conditions are essential. Firstly, there must be a bona fide dispute, Secondly, it must be between employers and employers, or between workmen and workmen, or between employers and workmen, and thirdly, it must be connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The words "any person" have been the subject-matter of interpretation by their Lordships of the Supreme Court and we "will have to refer to that decision at a subsequent stage. It Is sufficient to point out that their Lordships nave held that a limited meaning will have to be given to the words "any person", having regard to the context and the scheme of the Act. it is not open to the workers to take up the dispute of any person with whom they have no community of interest or with whose employment or non-employment or the terms of employment, they have no connection. The word "workman" has been defined as meaning

any person (including an apprentice) employed In any industry to do any skilled" or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or Implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute....

8. The contention of the applicants is that unless there is a dispute between the employers and his workmen, the dispute cannot be regarded as an "industrial dispute . If the three conditions necessary for attracting the definition of the "industrial dispute" exist in the present case, it cannot be said that the Government had no power to issue a Notification u/s 10 of the Act. The power of the appropriate Government u/s 10 of the Act to issue a Notification arises If any industrial dispute exists or is apprehended. It is contended that there is no dispute between the present Petitioners and the 70 workmen. The workmen have stated that they are working under the control of the present Petitioners. They are handling he cargo, which the Petitioners are carrying as carriers, piney are thus effectually in the employment of the Petitioners. The Petitioners have employed them in their work through the agency of the Labour Contractor and the workers have claimed that they should be directly employed by he present Petitioners. 1 hare is thus a bona tide depate between the present Petitioners

and the 70 "workers. It also cannot be said that the dispute does not relate to the employment, non-employment or terms of employment of the 70 workers. The only question is whether the workers can raise such a dispute when there is no direct counsel of employment between the Petitioners and the to workmen.

The contention of the Union is two-fold. Firstly, it is contended that though the dispute relates to the empress merit of the 70 workers, yet the dispel boon un-n up by the Union of Workers in a representative capacity, i.e. by a Union consisting of other workmen of the Petitioners and thus the dispute, though relating to the employment and non-employment of 70 workers with whom there may not be any direct contract, still, the dispute we been taken up by the other workmen of the Petitioners, and the dispute relates not to any stranger, but to a person with whom the other workers of the Union have a community of interest and in whose terms of employment they are interested. The contention of the Union is that though the contract of employment may be between the Contractor and the 70 workmen, it may be even accepted that the position of the contractor is that of an independent contractor and not of a servant of the present Petitioners, still, in fact, the 70 workmen work in the Petitioners" industry, and the housing and other benefits tire provide by the Petitioners and thus there is a relationship of an employer and workmen between them and the Petitioners.

It is further contended that in any case, this is a disputed question of fact, which this Court under Article 226 of the Constitution will not decide. In this connection, it is contended that the award given by Sri Ram Labhaya is neither binding on the parties, nor can the finding of Mr. Ram Labhaya that there was no direct contract of employment between the present Petitioners and the 70 workmen can be conclusive between the parties At any rate, it is urged that even if the award is in tore", it does not put any fetter on the powers of the Government to issue a fresh Notification u/s 10 of the Act and at this stage, this Court has only to decide whether such a Notification is or is not without jurisdiction.

9. We shall first take up the question as to how far the award given by Sri Ram Lanhaya is binding on the parties and what is its effect on the power of the Government to issue a fresh notification u/s 10 of the Act. I have already mentioned that this Court by its judgment dated the 13th July, 1957 held that the dispute was an "industrial dispute" and the contention raised on benefit of. the Steamer companies, who were the Petitioners before the Court that the dispute did not constitute, an "industrial dispute" was repelled. After the decision by this Court, it appears that the term of office of Sri Radhanath Razanka expired and Sri Ram Labhaya was appointed as the President of the Industrial Tribunal and therefore, a fresh reference was made to him on the 6th January, 1958. I tie question may be raised whether after the decision by tins Court that the .dispute was one covered by the definition of the "industrial dispute", It was open to Sri Ram Lasnaya to hold that it was not an "industrial dispute It will be necessary to examine the award. The disputes are sot out in the award. By a subsequent

notification dated the 4th September, 1956, the following issue was added;

(e) Is the Union justified in its demand for abolition of the post of labor contractor and direct employment of workers by the Co.

The Tribunal's finding is as follows:

After a careful examination of the evidence oral and documentary - the conclusion from which I have found no possible escape is that there is not even a clear allegation what to say of proof that there was any agreement reached between the Steamer Companies on one side and the workmen on the other, either directly or through their representatives establishing direct relationship of employer and employee by the abolition of the institution of the conductor.

xxxx

(37) I feel constrained in the circumstances above stated to hold that no relationship of employers and employees have come into existence so far between the Steamer Companies on one side and the workmen concerned on the other. The workmen cannot raise any industrial dispute against the Steamer Companies. They not being the workmen of the Companies can have no controversy about terms of employment or conditions of service with the Steamer Companies. The "reference to the extent that it involves a determination of demands against the Steamer Companies is beyond the scope of the Industrial Disputes Act, and, therefore, does not admit of any adjudication under it.

The finding in substance of the Tribunal was that as the workmen; not directly employed by the Steamer Companies, they could not raise any "industrial dispute" against the Steamer Companies and thus the reference to that extent was incompetent and no adjudication could be made. On that finding it is not open to argument that there was any award by Sri Ram Labhaya and any adjudication on the point whether the Union was justified- in its demand for abolition of the post of the Labour Contractor and direct employment of the workers or not. There being no adjudication on " this issue, the question does not arise whether it is binding on the parties or not.

10. The counsel for the Petitioners realised this and he has not relied upon the finding of Mr. Ram Labhaya on the aforesaid issue. His only contention is that the finding arrived at by Sri Ram Labhaya that there was no relationship of employers and employees between the Steamer Companies and the 70 workmen was a finding of fact, which must be held to be final between the parties. Even in the ordinary Civil Courts, if the Court holds that it has no jurisdiction to decide a suit, it would be doubtful if its subsequent finding will constitute *res judicata* in the subsequent proceedings; much less can the observation of an industrial Tribunal on any question of fact, after having held that the point referred to it required no adjudication and the reference itself was incompetent, can be binding on the parties, nor can it be a bar to the Government issuing a fresh

notification.

Reliance is placed on the case of Walford Transport Ltd. Vs. First Industrial Tribunal of West Bengal and Others, In this case, the matter came up before the Calcutta High Court by an application under Article 226 of the Constitution by which the decision of the Industrial Tribunal was impugned. One of the points taken was that the decision of the Tribunal Was barred by res judicata, by reason of an earlier decision of. another Industrial Tribunal. It was observed that

though the doctrine of resjudicata as embodied in Section 11 of the Code of CPC might not apply with full vigor, there is no reason why the decision of Industrial Tribunal should not be subject to the maxim "Interest republican outset finis lithium". It is only when circumstances are changed, that new controversies between the parties can be agitated.

In this case, reliance was placed on the decision of the Supreme Court in Burn and Co., Calcutta Vs. Their Employees,

These decisions are based on the rule of finality.

It was rightly contended that though Section 11 of the CPC in terms is not attracted to industrial disputes, still, if once a matter had been decided by a competent Tribunal, it will not be in the interest of the Industry to reopen the dispute. It can be said under these circumstances, that if the same point is regulated again, there is no bona fide dispute. But all these observations were based on the assumption that the Tribunal at an earlier stage was competent and had in fact given an award adjudicating on the controversy between the parties, in (the present case, as I have already pointed out, there was no award by Sri Ram Labhaya at all.

11. Reliance is then placed on Section 19 of the Act. The relevant provision is Sub-section (3) of Section 19, which purports that an award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A. The appropriate Government has been given power to reduce the said period and fix such period as it thinks fit. Sub-section (5) provides that

nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

Sub-section (6) provides that

notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed, from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

Section 17A lays down that an award shall become, enforceable on the expiry of

thirty days from the date of its publication u/s 17. An award is thus enforceable for one year from the date of its publication; one year has expired in the present case. Reliance is placed on Sub-section (6) of Section 19 of the Act and it is contended that unless a notice giving a clear intention to terminate the award is given within a period of twelve months from the date of one year, the award will be binding on the parties.

Apart from the fact that there is no award holding that the workmen were not entitled to claim direct employment, there is nothing in Sub-section (6) of Section 19, which bars the Government from issuing a fresh notification u/s 10 of the Act. The Legislature under Sub-section (6) has only made such an award binding on the parties, unless a notice terminating the same is given. But there is nothing in Sub-section (6) that it will be binding on the Government and till the award has been terminated by a proper notice, the Government had no power to issue fresh Notification. When the matter comes up before the Tribunal, whether the Tribunal will hold that there is no dispute being bound by the earlier award, is a different matter. But, there is nothing in Sub-section (6), which affects the right of the Government to issue a fresh notification. In view of the fact that there is no award by Sri Ram Labhaya dealing with the question whether the workmen were entitled to direct employment or not, any finding by him cannot be binding on the parties.

12. To our mind, the question whether there was the relationship of master and servant between the contractor and the companies or whether the contractor was an independent contractor is not relevant for determining the question whether the 70 workers can be regarded as the workmen of the Steamer Companies or not. Reliance is placed on the definition of "workman" in Sub-section (s) of Section 2. "Workman", as defined in that Sub-section, means any person, who is employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. The 70 workmen undoubtedly were working in the Industry. They were doing unskilled manual work on hire or reward. They, therefore, fulfilled the requirements of Section 2(s). If the contention of the Petitioners is accepted, then in the definition of the words "industrial dispute", the words "between employers and their workmen" will have to be added.

There may be cases where the direct contact may be between the contractor and the workmen, but nonetheless they may be employed in the industry or the business of the Co. They may be working in the Petitioners business and there may be certain facilities provided by the Petitioners themselves to the 70 workmen. They are not absolute strangers to the Petitioners. If they come forward and say, "we are doing your work, we are being provided with certain facilities by you and under these circumstances, in order that we may have an opportunity to make collective bargaining, we should be directly employed by you and the middleman should be eliminated", and if that is the position, it cannot be said that it is not a bona fide dispute between the steamer companies,

who are the employers and the workmen, and that it does not relate to the terms of employment or non-employment of the workmen. It is the very system of employing the workers, who actually work in the Petitioners' business through a middleman which is being disputed by these workmen and the dispute thus fully comes within the definition of "industrial dispute". We do not find any reason to differ from the opinion expressed in the earlier case" by a Bench of this Court and in our opinion, it has been correctly laid down in the case that the dispute in the present circumstances is an "industrial dispute" and the Government was competent to issue a Notification.

13. The contention of the Petitioners is that in view of the decision of the Supreme Court, the decision of this Court is no longer a good law. Reference is made to the case of *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, The only matter, which came up for decision before the Supreme Court was whether the expression "any person" in Section 2(k) of the Act should be given a wider meaning or its meaning, having regard to the scheme and purpose of the Act, should be limited. The workmen of the Dimakuchi Tea Estate, represented by the Assam Chah Karmachari Sangha, Dibrugarh, raised an "industrial dispute" with regard to the termination of service of one Dr. K.P. Banerjee, who was employed as an Assistant Medical Officer of Dimakuchi tea estate. The dispute about the discharge of Dr. K.P. Banerjee was referred to a tripartite Appellate Board, consisting of the Labour Commissioner, Assam and two representatives of the Assam Branch of the Indian Tea Association and the Assam Chah Karmachari Sangha respectively. After the recommendation of the Board, some more was paid to Dr. Banerjee and he left the tea garden in question.

Subsequent to that, the Government of Assam published a notification u/s 10 of the Act referring the dispute with regard to the discharge of Dr. K.P. Banerjee for adjudication to the Industrial Tribunal. One of the points taken up by the management was that Dr. K.P. Banerjee, not being a workman, his case was not an "industrial dispute" and thus, the Tribunal had no jurisdiction to adjudicate. The Tribunal accepted the contention of the management and on appeal to the Appellate tribunal, the decision that Dr. Banerjee was not a workman within the meaning of the Act was confirmed. The Tribunal also remarked that there could not be any industrial dispute between the employers and the employees, who are not work-men. The appeal was thus dismissed. The matter came before the Supreme Court by way of special appeal, it was accepted by the parties that Dr. Banerjee was not a workman within the meaning of the Act. The question raised, however, was that even though Dr. Banerjee was not a workman, still his case could be taken up by the other workmen, as the matter relating to his employment and non-employment was an industrial dispute within the meaning of the Act. The point was thus formulated by the Supreme Court at page 355" of the report:

Now, the question is whether a dispute in relation to a person who is not a

workman within the meaning "it the Act still falls within the scope of the definition clause in Section 2(k). If we analyse the definition clause it tells easily and naturally into three parts: first, there must be a dispute or difference; second, the dispute or difference must be between employers and employees, or between employers and workmen or between workmen and workmen; third, the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person, the first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the dispute; and the third to the subject matter of that dispute. That subject matter may relate to any of two matters- (i) employment or non-employment and (ii) terms of employment or conditions of labour, of any person.

In that case it was accepted that the first two parts were fulfilled inasmuch as there was a dispute or difference over the termination of the service of Dr. K.P. Banerjee and the dispute or difference was between the employer, namely, the management of the Dimakuchi tea estate on one side and its workmen on the other, even taking the expression "workmen" in the restricted sense in which that expression is defined in the Act. Their Lordships then proceeded to consider what was the meaning to be attached to the words "any person", occurring in the third part of the definition. Summing up, at page 364 of the report the Supreme Court observed:

Having regard to the scheme and objects of the Act, and its other provisions, the expression "any person" in Section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties "to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, of employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

Thus, the only point decided in this case was that it is open to the workmen to take up the case of any other person, who may not be a workman, but yet may be a person in whose employment, non-employment, or terms of employment or conditions of labour, the parties to the reference have a community of interest and it will be in their interest to raise such a dispute.

14. In the case of The Standard-vacuum Refining Co. of India Ltd. Vs. Its

Workmen and Others, a similar matter came up for decision and it was held that the raised by the workmen of a refinery company recapture the question as to whether there should be a employment by the company of the other workers or the employment can be made through a contractor was ass MI industrial dispute. It was held that the language of Section 2(k) covers such cases. It was argued in this case that the Tribunal should not have interfered with the assuagements manner of having its work done in the most economical and convenient way. that it thought proper. It was pointed out that this was not a case where the several system was a camouflage and the workmen of the tractor were really the workmen of the Co. Dealling with this question, it was observed:

It may be accepted that the contractor in the present case is an independent person and the system s?ance end there is no question of the company carrying on Ka work itself and camouflaging it as if it was dons THOUGH contractors in order to pay less to the workmen. But fact that the contract in this case is a bona fide contract would not necessarily mean that it should not be taffeta by the industrial tribunals. If the contract had been may fide and a cloak for suppressing the fact that of workmen were really the workmen of the company, the touchier would have been justified in ordering the company at the over the entire body of workmen land treat it as its turn. Workmen.

This case clearly decides that the question whether there was a bona fide contract between the management and the contractor or whether the contractor was only a mala fide contractor is not relevant for the purposes or determining the jurisdiction of the Industrial Tribunal Even though the Company may have bona fide SECM to take work from the workers whose contract of setter may be with the contractor, but nonetheless the industrial Tribunal's jurisdiction is not taken away, to decide a was fide dispute raised by the workmen.

15. In view of these two decisions of the Supreme Court, the counsel for the Petitioners had to concede un if the dispute of the 70 workmen was taken up by the other workmen of the Petitioners, such a dispute will be an "industrial dispute". But the contention is that in the present case, the dispute has been raised by the it workers and not by the other workmen of the Petitioner Companies and thus, It is the second part of the dittander which has not been satisfied in the present case and the third part. For this purpose, reliance is placed in the language of the Notification. It is contended that on Notification shows that the dispute was between the State me Companies and the 70 workmen and not between the prettiness and the persons who were admittedly the workmen of the Steamer Companies. The opening words of the Rustication an. as follows:

Where as an industrial dispute has arisen in the matter specked in. the schedule below, between;

(1) The management of R.S.N, and I.U.N, and Rly., Co., Ltd.,. P.O. Silchar, Dist. Cachar and Shri Rampratap Singh, Labour- Contractor, R.S.N, and I.G.N, and

Rly., Co., P.O. Silchar, Dist. Cachar.

(2) The workmen (numbering 70) of the Karimganj Railway Siding, Ghat, P.O. Karimganj, Dist. Cachar, represented by, the R.S.N, and I.G.N, and Rly., Co., Ltd., Workers the Gachar Branch, P.O. Karimganj, Dist. Cachar.

Act whereas it is considered expedient by the Government Assam to refer, the dispute for adjudication to a Court, constituted u/s 7 of the Industrial Districts Act,1947

It is urged, that this. Notification clearly shows that The parties to the dispute were only the 70 workmen and not the Union., as, such and the Union only represented the cause of. these. 70. workmen. We do not think that such an-interpretation can be placed on this Notification.

under Section 10. of the Act, no particular form of Notification has been, prescribed. It cannot be disputed that individual disputes, unless taken up by other workmen cannot be regarded as an "industrial dispute". Even in cases where an individual's dispute is taken up by the Union, the dispute, really is between the individual workmen, and the employer. But as the dispute affects the peace of the business or the industry and as the other workers have a community of interest, it is taken up by them and then it becomes an "industrial dispute". In the present, case also, though the dispute may relate to the employment or non-employment of the 70 workmen, still their dispute was taken up by the Union and it was .the Union, which had sponsored their cause and had taken up the matter is the government, consequent upon when the Notification was issued. The Union was no doubt representing the cause of these 70 workmen and by representing their cause, they ware as much party to the reference as the 70 workmen themselves. The dispute was thus taken up by the other workmen of the Steamer Companies and the fecund part Of the dedication was fully satisfied.

16. The contention of the Petitioners is that the was representing" the 70 workmen under the provisions Of Section 3.6 of the Act. Section 36 provides that

If workman who is a party to a dispute shall be another to be represented in any proceeding under this (a) an officer of a registered trade union of which to is a member;

(b) an officer of a federation of trade unions to which its trader union referred to in Clause (a) is affiliated;

(c) where the worker is not a member of any trade with by an officer of any trade union connected with, or by any other workman employed in, the Industry in the worker is employed and authorized in such wamer as may be prescribed.

This section provides that a workman, who is a party to a decree can be represented by any of the officers of the frat to" trade. In the present case, the 70 workers are not represented by any officer of the trade union. There is, . no

force in the contention of the applicants that in the notification the Union is alleged to represent 18ts. 7Ct"- wtrrftmeir in pursuance of Section 36 and not as they, taw token up the cause of the 70 workmen.

17. Reliance is then placed on the case of Abdul v. State of Madras, decided by the High Court of Madras, and reported In 1956 1 Lab LJ 746 (Mad), our attention is drawn to the following passage at p. 74/:

It does not need much argument to show that under the Industrial Disputes Act the existence of the relationship of employer and the employee is necessary before there can be any industrial dispute, and the existence of an industrial dispute is necessary before there can be any valid reference by Government of such dispute to an industrial tribunal. When the Petitioner proved that in the present case there was no such relationship between the Petitioner and the workers, who were impleaded as tire Respondent, the Government in their counter-affidavit stated in Para 2 that-

if there does not exist such a relationship (that Is as employer and employee), his contention that there was no industrial dispute and that the reference made by the Government as if there was such a dispute was without jurisdiction may be correct.

In view of the admission made by the Government in its counter-affidavit, the point does not appear to have been examined in this case. Moreover, relationship of employer and employee may exist in spite of the fact that there is no direct contract between the employer and the employee. The workmen may be employed under a contract with the independent contractor by the employer. This case does not lay down that unless there is a direct contract between the employer and the workman, there cannot be the relationship of employer and employee between the management of the industry and its workmen.

18. It was also urged that in the year 1959, a dispute was raised with regard to the direct employment to the 70 workers by the Petitioners, when the said dispute was the subject-matter of conciliation proceedings. On the 12th September, 1959 a settlement was arrived at, which was signed by the Union representing the 70 workers, the con tractor and the Conciliation Officer. In that settlement, the Union, with a view to arrive at an amicable settlement on behalf of the workmen, undertook not to. press for the present, their demand for direct employment under the Steamer Companies, Karimganj, though they were strongly of the opinion that the practice and system of employment through middleman contractor was far from justifiable. In view of this agreement, it is contended that there is no industrial dispute, which could tie referred by Notification, so long as the settlement was not terminated By a proper . notice. Section 18 provides that a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

19. According to the Petitioners" own allegation in the affidavit, their case is that

their representative did not sign the agreement as a party to the conciliation proceedings, but only as a witness. If the settlement cannot be binding on the Petitioners, the Petitioners cannot contend that the settlement bars the appropriate Government from issuing the Notification u/s 10 of the Act, or that it bars the workers to raise any dispute against the present Petitioners in view of the settlement. Section 19(2) provides that-

such a settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to tunicate the settlement is given by one of the parties to the other pat to or parties to the settlement.

There is some controversy between the parties whether any such notice was given or not. But, for the purpose of the present case, it is not necessary to go into that question. It is sufficient to point out that in cases where the "agreement itself fixes the period, after the expiry of the -aid period, the settlement becomes inoperative and made is no necessity to give any notice to terminate the settlement. The contention of the Union is that the undertaking expressly is for the time being, and not for ail time to come, and it cannot therefore, be said that an undertaking given on the 12th September, 1959 for the time being did not terminate on the 4th November, 1951 when the Notification was issued.

20. The point can also be examined from another aspect. The conciliation proceedings can relate to an industrial dispute and the contention of the Petitioners is that it was not an industrial dispute. If it was not an industrial dispute, there could be no conciliation proceedings and the Petitioners could not rely upon the settlement as a bar for the issue of the Notification u/s 10 of the Act.

In our opinion, there is no force in the petition and it is accordingly rejected with costs of the Opposite parties, which we assess at Rs. 150/-.

C.S. Nayudu, J.

21. I agree.

S.K. Dutta, J.

22. I have had the advantage of reading the judgment written by my Lord the Chief Justice. I agree with him that this writ petition must be rejected with cost which is assessed at Rs. 150/- I, however, give my reasons below.

23. The facts of the case have been elaborately stated in the aforesaid judgment and I need not repeat them. It will suffice to say that on the 4th November, 1961 the Government of Assam made a reference of a dispute u/s 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act) to the Presiding Officer of the

Labour Court, Assam.

24. The notification is as follows:

Dated, Shillong, the 4th November, 1961.

No. GLR/61/10 - Whereas an industrial dispute has arisen in the matter specified in the schedule below between:

(1) The management of R.S.N. and I.G.N. and Rly. Co., Ltd., P. O. Silchar, Dist. Cachar and Shri Rampratap Singh, Labour Contractor, R. S. N. and I. G. N. and Rly., Co. Ltd., P. O. Silchar, Dist. Cachar.

AND

(2) The workmen (numbering 70) of the Karimganj Railway Siding Ghat, P. O. Karimganj, Dist. Cachar, Represented by the R. S. N. and I. G. N. and Rly., Co., Ltd., Workers' Union, Cachar Branch, P.O. Karimganj, Dist. Cachar.

And whereas it is considered expedient by the Government of Assam to refer the dispute for adjudication to a Court constituted u/s 7 of the Industrial Disputes Act, 1947 (Act XIV of 1947).

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), as amended, the Government of Assam is pleased to refer the said dispute to the Presiding Officer of the Labour Court appointed under the provision of the said Act.

SCHEDULE

(1) Whether the demand for direct employment of the workers at Karimganj Railway Siding Ghat is justifies" (?) If not, what other relief the workers of Karimganj Siding Ghat are entitled to?

Sd/- D. Das. Secretary to the Government of Assam, Labour Department

25. The above notification is challenged by the petition in which it is contended that the notification is void, illegal and without jurisdiction. It is submitted that there is no contract of service between the 70 workmen and the River Steam Navigation and Indian General Navigation and Railway Co. Ltd. (hereinafter called the Steamer Companies), and as such, there is no "industrial dispute" between them within the meaning of Section 2(b) of the Act. "Industrial dispute" in that section is defined as follows:

"Industrial dispute" means any "dispute or differences 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 person.

26. It is urged that a dispute between "employee and workmen" can be an

industrial dispute within the meaning of the above definition provided there is relationship of master and servant between the disputants. Reliacs is placed in this respect on a decision of the Supreme Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, in which the following of servation was made. "Workman" has been thus defined to Section 2 (s) of the Act:

Workman" means any person employed (Including of apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward" and includes for the purposes of any proceedings under this Act of relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government.

The essential condition of a person being a workman within the terms of this definition is that he should be employed to do the work in that industry, that there stand be, in other words, an employment of his by the employee and that there should be the relationship between the "employer and him as between the employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workman with the definition of the term as contained In the Act.

27 I fully agree that for a dispute "between "employers and workmen" to be industrial dispute within the; meaning of Section 2 (k) of the Industrial Disputes Act, there must be a relationship of master and servant between the disputants. But whether there is such a relationship between the disputants is purely a question of tact end in will always depend upon the facts and circumstances or each case. The test is whether the alleged servant is under the control and bound to obey the order of the alleged master. This test was accepted by Avory, J. in Hill v. Beckett, (1915) 1 K. B. 578. Similarly in Yewens- v. Noakes, (1880) 6 Q. B. D. 530 Bramwell L J defined a servant as a person who was "subject to the commend of his master as to the manner in which he should do the work." The test is thus the right of control"(vide Goolbai Motabhai Shroff Vs. Pestonji Cowasji Bhandari,

28. Whether in the present case there is relationship of master and servant between the Steamer companies and the 70 workmen being a question of tact, can to Dom into by the Tribunal and not by this Court on a writ petition.

29. It is, however, submitted on behalf of the Petitioner that, in an award published on the 20th August, 1958 in the Assam Gazette made by Sri Ram Laonaya who was then the Presiding Officer of the Industrial Tribunal, it was already decided that there was no relationship of master and servant between the 70 workmen and the Steamer Companies and that that award was still binding of the parties u/s 19(6) of that Act. It may, ternary be noted that after examination of oral and documentary evidence the Presiding Officer came to the concision that there was no relationship of employers and employees between, the workmen and the Steamer companies and that the workmen therefore could

not raise an Industrial dispute against the said companies. He held that the reference to the extent that it involved a determination of demands against the Steamer Companies was beyond the scope of the Industrial Disputes Act. Therefore, I agree with my Lord the Chief Justice that there was no award by the Presiding Officer as between the 70 workmen and the Steamer Companies and consequently the question whether such an award is binding or not is irrelevant.

30. There is no dispute that some persons who are servants of the Companies can take up the case of the /o workmen and raise an industrial dispute even if the /u workmen are themselves not servants of the Companies, provided there is a community of interest between them. It is submitted in the counter-affidavit filed in the present case on behalf of Respondent No. 2 that all the members of the R. S. N. and I. G. N. and Railway Co. Ltd., Union, Cachar Branch, have taken up the case of the /u worker.

31. But from reading of the reference as it stands now, it appears that the above contention has no force. The disputants according to the notification are the steamer Companies and the contractor on the one hand and the workmen numbering 70 represented by the Union on the other. It is not said that the Union represents in this dispute anybody else except the 70 workmen. In such circumstances the contention that the Union is representing off its members cannot be accepted.

32. However, in view of my finding that it is the Labour Court which will go into the question whether or not the 70 workmen are servants of the steamer companies, this petition must be rejected.