

(1987) 07 PAT CK 0019
In the Patna High Court
Case No : L.P.A. No. 54 of 1985

Rohtas Industries Ltd.

APPELLANT

Vs

Ghanshyam Das Premi and Others

RESPONDENT

Date of Decision : 10-07-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2A, 33A, 33C, 36

Citation : (1987) 35 BLJR 798 : (1988) PLJR 125

Hon'ble Judges : S.S. Sandhawalia, C.J;S.B. Sanyal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—Whether an individual workman can question a settlement Award, the industrial disputes having been espoused by a recognized union and the reference made before the Industrial Tribunal is between the Management and the Union, is the substantial question of law that falls for decision in this letters patent appeal

2. Facts:-It appears that an industrial dispute was raised by the Rohtas Karamchari Sangh with their management M/s. Rohtas Industries Limited/Ashoka Cement Limited and the State Government on 18th November, 1972 in exercise of power conferred u/s 10(1)(D) of the Industrial Dispute Act (hereinafter to be referred to as the Act), referred twenty three items of industrial dispute for adjudication by the Industrial Tribunal, Government of Bihar. The parties to the reference are the Management of the Rohtas Industries Limited and their workmen represented by Rohtas Karamchari Sangh, Both the Management and the Union filed written statements. Most of the items of dispute were disposed of by several part Awards and items No. 1, 5, 6, 7, 14 and 20 were disposed of by the Award Part VI on 8th April, 1980 pursuant to a memorandum of settlement arrived at between the Management and the Union duly signed by the President and the General Secretary of the Union and the Executive President and the General Manager of the Management.

3. The Tribunal, by its order dated 8-4-1980, held the terms of settlement fair and reasonable and ordered an Award to be prepared on the basis of the terms of the memorandum of settlement which form part of the Award as Appendix-I. Subsequent to the said Award two workmen filed a petition for review of the order dated 8-4-1980 with respect to Items No. 1 and 5 since the said two items concerned the justification of their removal, but the Tribunal, by its order dated 7-5-1980 (Annexure-14 to the writ petition) rejected the said petition on the ground that the dispute being a collective one and not u/s 2-A of the Act, the petition by the two workmen is not maintainable.

4. The two workmen, thereafter, preferred a writ petition being C.W.J.C. No. 2347 of 1980 and this Court, by its order dated 11th March, 1985, set aside the Award as also quashed Annexure-14 by observing as follows:

It appears that the petitioners were not given an opportunity to assail the conciliation as far as it concerned them. The Tribunal would have been well advised to pass an order after conferring an opportunity to the petitioners who were going to be adversely affected by the memorandum of agreement.

After having so observed the Court directed the Tribunal to consider their objection to the settlement Award after hearing them and pass order accordingly.

5. Mr. Ramesh Kumar Dutta, learned Counsel appearing on behalf of the appellant, has contended that the judgment is vitiated by errors of law apparent on the face of it, Inasmuch as when a dispute concerning an individual workman is taken up by the Union and a reference is made at the instance of the Union under the Act, the- individual workman cannot ordinarily claim to be heard independently of the Union. The Tribunal having found the settlement just and fair it was not found to hear the individual workman Independently before passing an Award on a package settlement between the Management and the Union. It was further submitted that the Award, which have been set aside, related to more than two items which was assailed before the High Court but High Court set aside the Award as a whole. Further Rohtas industry were never noticed before the said judgment was rendered by this Court.

6. Admittedly, the industrial dispute, which was referred for adjudication, was at the instance of the concerned Union viz. Rohtas Karamchari Sangh. The writ petitioners did not raise any industrial dispute u/s 2-A of the Act. There was no conciliation between the management and the individual workman, therefore it is not a case of "deemed Industrial Dispute" which was referred to for adjudication. The dispute was raised by the workmen of the establishment collectively which ultimately resulted in the reference. The preamble of the reference reads as here under:-

Whereas the Governor of Bihar is of the opinion that Industrial dispute exists or is apprehended between the management of Messors Rohtas Industries Ltd. Ashoka Cement Ltd., Dalmianagar and their workmen represented by Rohtas Karamchari Sangh regarding the matter specified in Annexure-"A1 and annexed

hereto(tm)....

7. The judgment under appeal directs that before the Award was rendered the writ petitioners ought to have been heard, as they are adversely affected by the decision. This takes us to the question whether the writ petitioners are parties to the dispute in their own right and are entitled to be represented before Tribunal according to their own liking. Somewhat similar question arose in the case of *Ram Prasad Vishwakarma v. Chairman Industrial Tribunal* 1961 (2) F.L.R. 540 (S.C.). Dasgupta, J. speaking for the Court observed "in deciding this question we have on the one hand to remember the importance of collective bargaining in the settlement of industrial disputes and on the other hand, the principle that the party to a dispute should have a fair hearing. In assessing the requirements of this principle, it is necessary and proper to take note also of the fact that when an individual workman becomes a party to a dispute under the Industrial Disputes Act, he is a party not independently of the Union which has espoused his cause..... as a necessary corollary the Union or those workmen who have by their sponsoring turned the individual dispute into Industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal." Similar view was taken by a Bench decision of this Court in the case of *Dr. Chandra Kala Jha Vs. Management of Sone Valley Portland Cement Co. Ltd. and Another*, . There the settlement was challenged by the workman as not binding on her she being not a member of the Union and she had a right to be represented by a person of her choice. It was held that the dispute was espoused by the Union and it was referred to before Court for adjudication at their instance, therefore the workman, at no stage, is a party to the industrial dispute independently of the Union and the latter alone have a say in the conduct of the proceeding before the Tribunal. Same view has been taken by another Division Bench of this Court in the case of *Eastern Manganese and Mineral v. Industrial Tribunal* 1968 (2) L.L.J. 817.. Section 2-A (inserted by Act 35/65) of the Industrial Disputes Act however has introduced a fiction. It envisages that a dispute and difference between individual workman and his employer may also give rise to Industrial Dispute without intervention of the Union, if it relates the workman's discharge, dismissal retrenchment and termination. Therefore where the grievance is u/s 2-A, or Section 33-A or for that matter u/s 33(C), the worker is a party to the proceeding in his own capacity and therefore has a right to be heard or represented by a person of his choice u/s 36 of the Act.

8. Where an industrial dispute of Collective nature is raised by the Union with the employer, resulting in a reference the workers as individual do not come into the picture. It is an adjudication between the Management and the Union. The question might be little different if the industrial dispute would have been raised both by the Union and individual members as envisaged u/s 2-A of the Act.

I am, therefore, of the opinion that the instant industrial dispute being of collective nature and collective bargaining which formed the real nexus between the dispute and parties to the dispute, the Tribunal acted rightly in not hearing

the individual workman since at no time they are parties to the adjudication proceeding independent of the Union. The Tribunal has also found the package settlement just and fair. The justness and fairness of a settlement has to be considered as a whole, particularly when the settlement is a package deal. A settlement cannot be judged on the touch-stone of the principles applicable in adjudicating disputes by the Tribunal nor it is possible and/or permissible to scan the settlement in bits and pieces to hold some part good and acceptable and Ors. bad. The settlement has to be accepted or rejected as a whole. See *Herbertsons Ltd. v. The Workmen of Herbertsons*. 1977 (33) F.L.R. 398

10. In the result, the letters patent appeal is allowed and the judgment dated 11th March, 1985 passed in C.W.J.C. No. 2347 of 1980 is set aside. The decision of the Tribunal is upheld. There shall be no order as to costs.

S.S. Sandhawalia, C.J.

11. I agree