

(1972) 04 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jur. Case No. 940 of 1968

Samachar Bharti

APPELLANT

Vs

Kedar Nath and Others

RESPONDENT

Date of Decision : 10-04-1972

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26
Constitution of India, 1950 — Article 254
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 3

Citation : AIR 1972 Patna 397 : (1973) 26 FLR 226 : (1972) 5 PLJR 365

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

Bench : Division Bench

Advocate : B.P. Rajgharia and S.K. Sharan, for the Appellant; T.K. Jha and B.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—Samachar Bharti, a news agency, having its registered office in New Delhi, is the sole petitioner in this writ application. Shri Kedar Nath, respondent No. 1, is a working journalist within the meaning of Clause (f) of Section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Central Act XLV of 1955), hereinafter called the Working Journalists Act. At the relevant time he was working in the employment of the petitioner as a working journalist at Patna. He was discharged from service, whereupon he filed a complaint before the Presiding Officer of Labour Court, Patna, u/s 26(2) of the Bihar Shops and Establishments Act, 1953 (Bihar Act 8 of 1954), hereinafter called the Bihar Act. A complaint was filed, complaining about the discharge order dated the 1st of August 1967; a copy of the complaint petition is Annexure 1 to the writ application. Respondent No. 2, said to be the General Manager of Samachar Bharti, was implead-ed as opposite party No. 1 and Samachar Bharti as opposite party No. 2 in the petition (Annexure 1). In response to the notice served on the petitioner it appeared and filed a preliminary objection that the

petition was not maintainable in the Labour Court u/s 26 of the Bihar Act as also on the ground that the Labour Court at Patna had no jurisdiction to entertain the petition as the General Manager and the Samachar Bharti were residing and carrying on their business at Delhi, outside the jurisdiction of the Labour Court at Patna. A copy of the preliminary objection on behalf of the petitioner is Annexure 2 to this writ application. The Presiding Officer of the Labour Court, respondent No. 3, by his order dated the 26th of July 1968, a copy of which is Annexure 3, overruled the preliminary objection and held that the remedy under the Bihar Act was available to respondent No. 1. He does not seem to have gone into the other question as to whether he had jurisdiction to entertain the application even if the remedy under the Bihar Act was available to the complainant. The petitioner has obtained a rule from this Court against the respondents to show cause why the said order of respondent No. 3 be not called up and quashed and why the proceeding pending before him u/s 26 of the Bihar Act be also not quashed.

2. Respondent No. 1, who hereinafter unless otherwise indicated will be referred to merely as respondent, has filed a counter-affidavit and shown cause at the time of the hearing of the application. Facts do not seem to be much in dispute. The important point which falls for our consideration in this case is whether the remedy provided u/s 26 (2) of the Bihar Act was available to respondent No. 1. If he had no right to file that application, it is plain that the proceeding before the Labour Court will have to be quashed. This contention put forward on behalf of the petitioner, for the reasons to be stated hereinafter, must succeed. I do not propose to discuss the other point urged on its behalf that even if the remedy provided under the Bihar Act is available to the respondent, the Patna Labour Court had no jurisdiction to entertain the application against the petitioner.

3. The Working Journalists Act was passed by the Central Legislature j after coming into force of the Bihar Act. The petitioner is a newspaper establishment within the meaning of clause (d) of Section 2, and there does not seem to be much "debate and dispute that the respondent is a working journalist within the meaning of Clause (f). That being so, the Working Journalists Act is an Act to regulate the conditons of service of the respondent, as is apparent from the preamble of the Act. Section 5 of the said Act provides for payment of gratuity, Section 6 prescribes the hours of work, Section 7 refers to leave and Sections 8 and 9 deal with the fixation or revision of rates of wages. So providing for many matters governing the service conditions of the working journalists, the provisions of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) have also been made applicable, with slight modifications by Sections 3 and 4 of the Working Journalists Act. It will thus be seen that the Working Journalists Act read with the Industrial Disputes Act provides a complete code to regulate the conditions of service of working journalists. It would appear from several decisions of this Court as also of the Supreme Court some of which will be alluded to hereinafter, that the legislative power either of the Centre or of the State to enact such legislations as the Working Journalists Act or the Bihar Act are to be found in one or the other item of the Concurrent List, viz, List III of the

Seventh Schedule. That being so, on two grounds it may be held that the conditions of service of the respondent are exclusively governed by the Working Journalists Act and the Industrial Disputes Act, and for the redress of his grievance, if any, he has to follow the remedy provided therein. One of the grounds on which such a view may be rested is with reference to Article 254 of the Constitution. In matters of details the provisions may not be identical, but, broadly speaking, the Central Act as also the Bihar Act cover the same field. It would be pertinent to state here that Section 26 of the Bihar Act, as it was originally enacted, was re-pealed and substituted by a new section by an amending Act, being Bihar Act 26 of 1959 which came into force on the 25th of November 1959. This amending Act had not been reserved for the assent of the President, nor had it received his assent. Without an elaborate discussion of the matter, to put it briefly, therefore, it would be legitimate to take the view that, if there is a complete code to govern the service conditions of the working journalists by a Central Act, the Bihar Act will give way to the former and the rights and liabilities of the newspaper establishment and the working journalists would be governed by the Working Journalists Act (incorporating many matters, as it does of the Industrial Disputes Act).

The other reason, which may be given to support the view expressed above, is this. The Bihar Act, as the preamble indicates, is an Act to provide for the regulation of conditions of work and employment in shops and other establishments and for certain other purposes. I have no doubt in my mind that the news agency, like the petitioner, would be an establishment within the meaning of Sub-section (6) of Section 2 of the Bihar Act. The Bihar Act being of a general nature will cover ordinarily and generally all kinds of workers working in the establishment. Therefore, this is a general Act. The Working Journalists Act, however, is a special Act governing the service conditions of the working journalists only working in the newspaper establishment. That being so, on the principle "generalibus specialia derogant" the Special Act will exclude the application of the General Act. My reasons for saying so are these. Beading the Working Journalists Act with the Industrial Disputes Act on the one hand and the provisions of the Bihar Act on the other, it may be found that in regard to many matters there are provisions in both the Acts; e. g. hours of work for a working journalist are provided in Sec. 6 of the Central Act, while daily and weekly hours of work in establishments are provided in Section 9 of the Bihar Act. Section 7 of the Central Act deals with leave, Section 16 of the Bihar Act deals with the same subject-matter. It is not necessary to multiply instances of there being provisions in the Central Act as also in the Bihar Act on the same subject. On some matters, which are provided in the Central Act, Bihar Act is silent and vice versa. In regard to some matters the scope and the grounds on which a particular relief can be granted are different in the two Acts. Beading the Working Journalists Act with Sections 2A and 10 of the Industrial Disputes Act it would be noticed that the order of an allegedly illegal dismissal or discharge can be attacked by raising an industrial dispute. The scope of the reference u/s 10 would be in one sense wide

than the remedy provided in Section 26 of the Bihar Act and in another sense it would be narrower. It would be wider because the powers of an Industrial Tribunal for adjudication of a reference made under the Industrial Disputes Act are not circumscribed by any statutory provision but are governed by the well-enunciated principles of law by judicial decisions. On the other hand, the power of the authority u/s 26 of the Bihar Act is circumscribed by the statute. It was narrower in the sense that an Industrial Tribunal had to adjudicate upon limited questions, but, it seems, in this regard the difference has been done away with by introduction of Section 11A in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1971. The question therefore, arises that if two statutes are there to govern the service conditions of a particular type of employees, is the employee or the employer to be left in doubt as to which Act will govern their service conditions, which remedies will be available to them and, while taking any action, what are they to do, which law are they to follow? To my mind, the questions posed by me, suggest the answers that if there is a Special Act, which is a complete code in itself to govern the service conditions of a particular type of employees, that Act must govern them although in some respects it may not be as advantageous or adequate either to the employee or to the employer as any other Act or the general Act may be.

4. I think I can press into service some observations of the Supreme Court in Ahmedabad Mill Owner's Association v. I. G. Thakore AIR 1967 SG 1091, to support the first reason given by me above. In this case, the argument was that on enactment of the Industrial Disputes Act the provisions of the Bombay Industrial Disputes Act, 1938, had ceased to operate. Bhargava, J. delivering the judgment on behalf of the Court, observed at page 1097, column 2, that the provisions contained in Chapter V of the Bombay Act were not to be found in the Industrial Disputes Act. Therefore, they had not ceased to be operative, but then it was said-

"..... even if the submission made on behalf of the appellant be accepted that the Industrial Disputes Act, 1947, is an exhaustive code dealing with the question of settlement of industrial disputes, only those provisions of the Bombay Act of 1938 can be held to be repugnant and void on account of the repugnancy which also dealt with the same subject-matter of settlement of industrial disputes."

5. The view expressed by me seems to be firmly rested on the second ground, in view of a Bench decision of this Court as affirmed by a Full Bench. In Bihar State Road Transport Corporation Vs. Orang Bahadur and Another, , a question arose whether a Motor Transport worker in the matter of his dismissal or discharge could take recourse, to Section 26 of the Bihar Act. His service conditions were held to be governed by the Motor Transport Workers Act, 1961. The Bihar State Road Transport Corporation was undoubtedly said to be an establishment within the meaning of the Bihar Act yet, on a consideration of the definition of "Motor Transport Worker" given in clause (h) of Section 2 of the Motor Transport

Workers Act, it was held that that Act being a complete code to govern his service conditions must be deemed to hold the field in preference to the Bihar Act; the Bihar Act must give way to the Central Act. It may be doubtful, in view of the definition of "Motor Transport Worker" given in clause (h) whether the case was rightly decided. The definition, in express language, had excluded a Motor Transport Worker employed in a Motor Transport undertaking, if such a person was governed by the provisions of any law for the time being in force regulating the conditions of his service as being employed in shops and commercial establishment Nara-simham, C. J. seems to have taken the view that to remove all doubt the Legislature has excluded such a Motor Transport Worker in the definition to exclude the application of the Bihar Act. Such a reasoning, if I may say so with very great respect, is not quite clear to me; I doubt whether it is right. But for the purpose of the present case, I want to lay emphasis on the second ratio of the decision. Having held that the service conditions of Orang Bahadur were governed by the Motor Transport Workers Act, it was pointed out that Orang Bahadur could not take recourse to Section 26 of the Bihar Act, although there may not be a similar provision in the Motor Transport Workers Act, as the Central Act was a complete code to govern the service conditions of the Motor Transport Workers.

6. Another case of a Motor Transport Worker came before me when I was sitting in a Division Bench with another learned Judge of this Court. There that worker had applied u/s 28 (1) of the Bihar Act claiming payment of arrears of wages against a person who was running a Motor Transport undertaking. The claim was allowed by the Assistant Labour Commissioner who directed the employer to make payment of Rs. 2636 to the worker. The employer went up in appeal before the Industrial Tribunal. The Bench decision of this Court in Bihar State Road Transport Corporation Vs. Orang Bahadur and Another, , was cited before the Tribunal. But the Presiding Officer of the Tribunal endeavoured to distinguish it as also went to point out that in view of Sub-clause (ii) of clause (h) of Section 2 of the Act of 1961 a Motor Transport Worker whose service conditions were being governed by the Bihar Act at the time of enactment of the 1961 Act had been kept out of operation of the Central Act. Feeling force in this reasoning the case referred for decision to a larger Bench, as the correctness of the Bench decision in Orang Bahadur's case was doubted. The Full Bench, in Amarnath Singh Vs. Presiding Officer, Industrial Tribunal and Others, , affirming the views expressed by the Division Bench, although for some different reasons, set aside the award of the Assistant Labour Commissioner, holding that the remedy provided in Section 28 was not available to the Motor Transport Worker, as his conditions of service were fully governed by the Motor Transport Workers Act, 1961. I may again venture to say a few words with Very great respect, in regard to the views expressed by Misra, C. J. with whom the other two learned Judges constituting the Full Bench agreed. To me it appears that the correctness of the interpretation put to Sub-clause (ii) of clause (h) of Section 2 of the Motor Transport Workers Act is doubtful. The learned Chief Justice, it appears, has taken the view that

only such Motor Transport Worker has been excluded by Sub-clause (ii) to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments, apply, if that shop or commercial establishment is not a Motor Transport undertaking. I venture to think that there was no necessity of excluding such a worker, because if the commercial establishment is not a Motor Transport undertaking within the meaning of clause (g) of Section 2, then the worker Working in such an establishment will not be a Motor Transport Worker within the meaning of the main definition of clause (h) of Section 2. Be that, however, as it may, what I want to emphasise is that on the second point Misra, C. J. also has, more or less, expressed the same view as the One taken by the Narasimham, C. J. That being so, it is clear to me that the Bench and the Full Bench decisions of this Court referred to above can very well be used In support of the view expressed by me earlier in this case, as the difficulty of the first part of the said judgments is totally absent in the instant case. The said judgments are also binding on us. I am clearly of the opinion that to govern the service conditions of the working journalists the Working Journalists Act, incorporating as it does some of the provisions of the Industrial Disputes Act, is a complete code and, therefore, the working journalists cannot take recourse to Section 26 of the Bihar Act.

7. The hearing of this writ case was deferred, as it was stated on behalf of the respondent by his learned counsel that an identical point was pending decision in another case which has been referred to a Full Bench. The case was posted for hearing before us after the said decision, which is now reported in the Managing Director, Indian Oil Corporation Ltd. v. C. D. Singh ILJ 1972 Pat 124 : 1972 LabIC 808 . If the decision of U. N. Sinha, C. J. with whom the two other learned Judges had agreed in the case of the Indian Oil Corporation, would have been directly in point, difficulty of some magnitude would have cropped up before us as to which Full Bench decision is to be followed--the earlier one or the later one, as in the later one there is no reference to the earlier Full Bench decision. But I am relieved of that difficulty in this case as, in my opinion, the decision in the Full Bench case of the Indian Oil Corporation is distinguishable. An employee of the Corporation had been dismissed or discharged by the employer. He first set in motion the machinery under the Industrial Disputes Act. At the time of the pendency of the conciliation proceeding he filed an application u/s 26 of the Bihar Act. When this case was pending before the Labour Court a reference u/s 10 of the Industrial Disputes Act was also made by the Government for adjudication of the dispute:

"Whether the dismissal of Shri C. D. Singh, Sales Officer at Patna is proper and justified? If not, is he entitled to reinstatement and/or any other relief?"

The Corporation challenged the proceeding u/s 26 of the Bihar Act after the reference was made under the Industrial Disputes Act by a writ application in the High Court. As would appear from the decision of the Full Bench, the main stress, rather the whole stress laid on behalf of the Corporation was that after the

introduction of Section 2A in the Industrial Disputes Act which enabled an individual workman to raise an industrial dispute with regard to his dismissal, he had no remedy available u/s 26 of the Bihar Act, as there is a repugnancy between the two provisions and, therefore, the provision contained in Section 26 should be held to be void after the introduction of Section 2-A in the Central Act. This argument was repelled by an elaborate discussion of the matter, if I may say so with respect, and it was held that there was no repugnancy between the two provisions: both the provisions were operating in different manners and in different fields. The point of distinction between the case of the Indian Oil Corporation and the instant case is obvious. There, except the provisions of the Industrial Disputes Act no other Act was to be found governing the service conditions of the employees of the Oil Corporation. The Industrial Disputes Act also no doubt in some matters does regulate the service conditions of the workmen employed in an industry. But the dominant object of the Act is not to provide for the service conditions of the workmen, as the preamble of the Act indicates, but it is an Act to make provisions for the settlement of industrial disputes and for certain other purposes. Perhaps, that may be the reason why the earlier Full Bench decision of this Court given in relation to the case of a Motor Transport worker was either not cited before the Full Bench or was not referred to by it. On the basis of the provisions contained in the Industrial Disputes Act, so far as I know, it had not been possible so far to contend that it is a self-contained code to regulate the service conditions of the workmen employed in an industry and, therefore, any other Act regulating their service conditions must give way to the said Central Act. On the other hand, as I have pointed out above, while incorporating certain provisions of the Industrial Disputes Act, the Working Journalists Act had engrafted many other provisions to govern the service conditions of a working journalist. That being so, the sum total of the provisions is a self-contained and "a complete code governing the service conditions of a working journalist.

8. Before I close my discussion with reference to the Full Bench decision of this Court in the case of the Indian Oil Corporation 1972 Lab IC 808 :1972 BLJR 124 I may just state that an alternative argument was also advanced by the learned counsel for the petitioner before the Full Bench that both the cases should not be allowed to proceed simultaneously one on reference under Sec. 10 of the Industrial Disputes Act and the other u/s 26 of the Bihar Act. Their Lordships overruled this argument also. To avoid any difficulty which might arise because of the pendency of the two cases simultaneously an endeavour was made by the learned counsel for C. D. Singh in that case to persuade the Full Bench to hold that a reference u/s 10 was invalid; but their Lordships did not decide that question and ultimately held that the objects of the two proceedings under the two Acts were entirely different and, therefore, there was no reason to hold that either of the two proceedings must give way to the other. In allowing both the proceedings to proceed simultaneously, one may be faced with Some difficult situation of there being contradictory decisions by two different authorities on the

same subject-matter, although within the scope of their powers. If supposing the Industrial Tribunal on reference holds that the dismissal of the employee was not justified and orders reinstatement, say, with compensation for back wages amounting to Rs. 5000/- and if on that date the proceeding under the Bihar Act was pending, what will happen to the proceeding? Will it fail on the ground of res judicata or will it become infructuous? Will the authority under the Bihar Act be allowed to proceed and conclude the same proceeding, as its object is said to be different? In that event, that authority may also pass an order of reinstatement and with compensation say amounting to Rs. 3000/-. In that case, the common operative portions of the two orders would be reinstatement; that can be obeyed by the employer or he can be forced to obey it by procedure known to law. But, will he be bound to pay both the amounts of compensation, because in the two proceedings two different amounts had been ordered? If one, which amount? Any way, I am happy to find that these troublesome questions which could have fallen for consideration by allowing the two proceedings to go on simultaneously do not arise in this case. If they would have arisen, probably it would have been legitimate to take the view that in exercise of the power given under Article 227 of the Constitution which is a general power of superintendence or under the inherent power, one proceeding should be stayed till the disposal of the other proceeding. But in the instant case there is no other proceeding pending; the respondent has moved the authority u/s 26 of the Bihar Act only. As was done by a Bench of this Court in Bihar State Road Transport Corporation Vs. Orang Bahadur and Another, , I allow this writ application and quash the proceeding pending before the Labour Court, Patna, u/s 26 (2) of the Bihar Act at the instance of Shri Kedar Nath, respondent No. 1 in this case. In the circumstances, I shall make no order as to costs.