

(2004) 06 CAL CK 0017
In the Calcutta High Court
Case No : Writ Petition No. 20068 (W) of 2003

Sanjit Das and Others

APPELLANT

Vs

Ld. 1st Industrial Tribunal and Others

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 2A
West Bengal Industrial Disputes Rules, 1958 — Rule 20D

Citation : (2005) 1 CHN 68 : (2005) 2 LLJ 870

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Abhratosh Majumdar and Puspendu Chakraborty, B.R. Patranabish and S. Sengupta, for the Appellant; Pratik Prakash Banerjee and Rajesh Upadhyay for the Respondent Nos. 2 and 5, for the Respondent

Judgement

Amitava Lala, J.—In this writ petition, an interim order of the learned Judge, First Industrial Tribunal dated 17th September, 2003 is under challenge. This order is arising out of an application made by the petitioners under Rule 20D of the West Bengal Industrial Disputes Rules, 1958, praying, inter alia, to add the workmen as parties in the proceeding and allow them to represent their case individually without getting it espoused by any of the Labour Unions. The Tribunal held that present workmen (eight in numbers) are already on record as their names appear in the list annexed to the order of reference itself. As such, the question of them on record as parties does not and cannot arise. It further held that since the case of the workmen is being espoused by the Union as incorporated in the order of reference, it cannot travel beyond the ambit of the order of reference. The application was ultimately rejected.

2. It appears from the first paragraph of the order that the Unions were absent on repeated calls. The learned Advocate for the company was present. The learned Advocate for the workmen was also present.

3. Therefore, a pertaining question arises before this Court that when the Unions

are absent, the workmen can proceed with the matter before the Tribunal independently or not in the aforesaid circumstances. It has been argued at length on behalf of the management before this Court that by virtue of Rule 20D of the West Bengal Industrial Disputes Rules, 1958, there is a scope of addition of parties to the proceeding but there is no scope of deletion of parties. According to me, such submission is not the subject-matter herein. The crux of the case is that in spite of being parties, if the Unions fail to appear or represent the case whether the workmen are entitled to represent their own case even in their absence having been party to the reference or not. The necessity of such representation, if refused - whether the workmen would be remediless or not. The first part of the order is militating with the last part of the order. The first part clearly says that the individual 8 workmen are very much parties to the order of reference and the last part says that the learned Judge of the First Industrial Tribunal cannot travel beyond the ambit of such order of reference but the application is rejected. It is highly erroneous in nature. It should have been said that as because the individual workmen and the Unions both are very much parties to the order of reference, nothing could restrain them from expunging their cause before the Tribunal either independently or through the Unions.

4. In considering the question of independent representation by the workmen, law is not like the earlier one. Section 2A was inserted by way of amendment on 1st December, 1965, giving the right to any individual workman to raise an industrial dispute when the question of discharge, dismissal, retrenchment or otherwise termination is/are the issue/issues. By West Bengal amendment in 1989 "refusal of employment" become part and parcel of Section 2A of the Act additionally. The refusal of employment has its wide connotation. It is to be remembered that before the West Bengal amendment in 1989, in the years 1987 and 1988 two other States introduced State amendments extending the scope of the section to any manner of dispute. Such States enormously extended the scope and it is expected that the State like ours should have adopted the same showing interest towards the poorer section of the people. It may be refusal in not giving employment. It may be not regularising the employment. It may be not giving adequate benefit of the employment. All such refusals are refusals of employment. But we helplessly see that we are more concerned about right of Union but not right of individual workman. Be that as it may, nomenclature "refusal of employment" ipso facto, has got no meaning unless interpreted in the above manner. It has to be determined from the nature and character of factual dispute. Incidentally, in this case, the nature of refusal of employment is refusal of regularisation. It is to be remembered that if the regularisation of the staff is refused, he may be held up from getting higher pay scale, leave entitlement, tiffin and other allowances etc. which is nothing but refusal of service. Whether the same will be granted or not granted, the same is not the subject-matter for this Court. It is a serious question which ought to be respected before passing a final order on that score. That apart, the dispute is not independent of judicial intervention. The jurisdiction of the Writ Court was intervened in the earlier

occasion from which the conciliation and other proceedings were held and admittedly taking the names of 8 workmen, the order of reference was made. The issue under the order of reference is - whether the demand for regularisation of services of 8 workmen as per list enclosed under M/s. Braithwaite & Company Ltd. by the management is justified? And what relief, if any, is the workman entitled to? In such a situation, if the individual workmen are parties with the Union and the Union is absent, how the applications of workmen will be justiciably be rejected is not known to this Court.

5. The next important point is right to represent the case of the litigants before the appropriate Labour Court and/or the Industrial Tribunal. That right is protected u/s 2(k) and not infringed by virtue of Section 2A of the Act. Section 2(k) clearly envisages that "industrial dispute" means 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 conditions of labour, of any person. If such right is usurped by virtue of Section 2A then the definition clause of the Act under such section will be declared nugatory. It is not the import of the legislature. Legislative body felt that in case of discharge, dismissal, retrenchment and otherwise termination of the service of an individual workman, any dispute or difference can be taken up by him notwithstanding the fact that no other workmen or the Union of workmen are the party to the dispute. Therefore, the same is restricted in respect of an individual workman but not more than the individual workman irrespective of availability or non-availability of the Union. The section clearly states that notwithstanding that no other workmen nor any union of the workmen is a party to the dispute. In the instant case other workmen and also the Union are parties to the dispute. In that way, workmen cannot be restrained from espousing the cause. I have gone through the judgment cited by the parties hereunder. I find the judgment reported in Paradip Port Trust, Paradip Vs. Their Workmen, , Paradip Port Trust, Paradip v. Their workmen with another matter is made in respect of the representation of one cause by an Advocate before the Industrial Court. Therefore, it has got no bearing upon these points herein. In Simpson and Co. Ltd. Vs. State of Andhra Pradesh and Others, , it was held by the Andhra Pradesh high Court that a dispute in respect of single workman with the management is not an industrial dispute within the meaning of Section 2(k) of the Act which is factually distinguishable hereunder. In The Behar Journals Ltd. Vs. H.K. Chaudhuri and Another, , again the question of representation of the case of the workmen u/s 36 of the Act was considered which has got no bearing whatsoever upon the present case. In Ram Udgar Singh Vs. Presiding Officer, Labour Court, C.N. Division and Others, , Ranchi & Ors., a dispute again arise u/s 36(2) of the industrial Disputes Act. Therefore, in effect, all the judgments are not very much relevant in the present factual context hereunder. More than the number of individual workman and the Union are the parties to the order under reference. Therefore, other two judgments are necessary for consideration. The judgment

reported in Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, ., deals with the Act of the State of Maharashtra which prevents appearance of an individual employee in the proceeding under such Act. Therefore, the ratio of the same cannot be held to be applicable. The ratio of the other case reported in Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, , Industrial Tribunal, Patna & Ors., is important in nature. Even without the availability of the amendment of Section 2A under the Industrial Disputes Act, the Supreme Court held that even in such case where there are available circumstances, the independent workmen can be allowed to represent the case.

6. Thus, taking into totality of the matter, I am of the view that the order impugned cannot be sustained. Therefore, the order impugned stands set aside. The matter is remanded back to the Industrial Tribunal to re-hear the application in the light of judgment and order passed by this Court and finalise the issue within a period of one month from the date of communication of this order preferably.

7. Since no affidavit-in-opposition has been used, the allegations contained in the writ petition shall not be deemed to have been admitted.

8. Parties are permitted to take down the gist of the order and communicate the same to the authority concerned who will act upon such communication.

9. Let urgent xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties within the period of a fortnight from the date of putting the requisites.