
(1960) 06 KL CK 0020
In the High Court Of Kerala

Shamsuddin

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-06-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1961) 1 LLJ 77

Hon'ble Judges : M.A. Ansari, C.J;P. Govinda Menon, J

Bench : Division Bench

Judgement

M.A. Ansari, C.J.—The writ petitioner in O.P. No. 296 of 1959 is the appellant, and seeks to set aside the award by the industrial Tribunal, Trivandrum, in Dispute No. 1 of 1957. The aforesaid prayer has been rejected by a learned Judge of this Court; hence this appeal.

2. The facts leading to the petition can be shortly stated : The appellant, who is a sub-agent of the Standard Vacuum Oil Company in Quilon, had dismissed three workmen on 3 October 1956. The employees got themselves subsequently enrolled as members of the "Quilon Commercial Staff Association," and on 19 October 1956, a dispute between the employer and the aforesaid association developed, in which the Government had referred two questions to the tribunal, by order of 8 January 1957. Before the tribunal, the dismissed workers on 28 January 1957 filed a petition, praying that in the proceedings they may be allowed to be represented by the Quilon Commercial and industrial Employees' Association, because they had, after the reference, resigned the membership of the former and had joined the latter association. On 16 February 1957, the secretary of the Quilon industrial Commercial Staff Association also submitted to the tribunal a petition that his association did not desire to prosecute the claim, and that the tribunal be pleased to drop all the proceedings. The tribunal allowed the three workmen's prayer, for permitting the Quilon Commercial and industrial Employees' Association to represent them, and nearly two years later, i.e., on 13 February 1959, the award in the case was given.

3. The appellant has challenged the legality of the award on several grounds, and one of these is that the dispute could not be referred to the tribunal as the quarrel was between individual workers and their employer, there being no union, of which the dismissed employees were members at the time they were dismissed. The appellant's learned Counsel had argued that any subsequent sponsoring by the union, whose members, the dismissed workers had later become, would not convert the dispute initially outside the industrial Disputes Act, hereinafter referred to as the Act, into one covered by the Act. The learned Judge, who heard the writ petition, has rejected the argument on the ground that, if the dispute be between the union and the employer, that would amount to an industrial dispute, notwithstanding its being at its initial stage a quarrel between individual workers and their employer.

4. The appellant's advocate has taken two grounds for this appeal being allowed, which are that:

(1) Only disputes between the employer and the union of those employed in similar or allied trade, of which the aggrieved workmen be members at the time the cause for the dispute arose, would be covered by the Act.

(2) Any subsequent membership of the aggrieved workmen of a union, would not make the union a party to the dispute for the purpose of the quarrel being referred and the award being made, as the Act, by subsequent events, could not be made to extend to what be beyond its operation when the event giving rise to the dispute occurred.

5. It is clear that every controversy between the employer and an association of persons sponsoring the cause of the aggrieved, workmen, would not amount to industrial dispute, however wide the language of Section 2(k) may be. Thus in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, a linotypist was dismissed from service by the appellant company on allegations of incompetence, and the Uttar Pradesh Working Journalists' Union, that had no connexion, took up the matter. The typist's case was not taken up by any union of his co-workers, nor by any of the unions of workmen employed in similar or allied trades. On the journalists taking up the case, the Uttar Pradesh Government made a reference to the industrial tribunal, and Kapur, J., allowing the appeal, has observed at p. 8 as follows:

The words used in the first part of the notification show that the Government was labouring under the misapprehension that this dispute was between the employer on the one hand and his workmen on the other, which, in fact, it was not. Tajamul Hussain could not be termed workmen (in the plural) nor could the Uttar Pradesh Working Journalists' Union be called "his workmen," nor is there any indication, that the individual dispute had got transformed into an industrial dispute. The very basis, therefore, of the reference was bad and must be held to be so.

6. It follows that there must be community of interest in order to justify the

dispute being treated as an industrial dispute. Those sponsoring the cause must be in the same employment, in the same association or union or with same class of rights; otherwise the Quarrel would be of the workers as individual and beyond the operation of the Act, Chandrasekhara Ayyar, J., in *D. N. Banerji v. P.R. Mukherji* 1953 I L.L.J. 195 at 198-199 gives in broad terms, what community of interests would justify the stranger's being treated as party to the dispute:

The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests--such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays, and so on. Even with reference to a business that is carried on we could hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organized themselves into groups for the purpose of fighting their disputes and setting them on the basis of the theory that union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when, as often happens, it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise also in such a manner as to cover the industry as a whole in a case where the grievance, if any passes from the region of individual complaint into a general complaint on behalf of all the workers in the industry. Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an individual dispute, which the Government cannot afford to ignore as a minor trouble to be settled between the particular employer and workmen.

In *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, such interest has been described by Venkatarama Ayyar, J., as the rights of workmen as a class:

Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen.

7. It is, therefore, clear that there must not be mere sympathy for the aggrieved workman, but community of interest for applying the Act to the dispute. The next question is when must that interest exist. We would, in this connexion, cite *Padarth Ratnam and Company Vs. Industrial Tribunal and Others*, wherein it has

been held that the primary requirement about the dispute becoming an industrial dispute, is that on the date, on which some disciplinary action 1B taken against the aggrieved workmen, their cause must be espoused either by a union, of which they are members, or by a substantial section of the entire establishment, where the dismissed workmen were formerly employed. The learned Judge has further held that so long as a substantial section of the entire establishment or a recognized part of the establishment does not take up their cause, there can be no industrial dispute. This view has been dissented from in the present case by the learned Judge of this Court, and it has been found that the test of having community of interest would be satisfied, if at the stage the dispute develops into industrial dispute, there be a union sponsoring the cause of the aggrieved workmen as its members. In other words, it has been held that there is no necessity for the aggrieved persons being members of the union at the time the act giving rise to the dispute had taken place. With respect we differ. The community of interest has been insisted upon in order to exclude those, who have no immediate and direct interest, from subsequent participation in any unconnected disputes, and the object would be defeated, were such interest be not insisted upon at the initial stages. Otherwise, associations, of which the original parties be not members, would subsequently join on any of the aggrieved party's becoming members and persuading the later associates to take up their cause. The possibility of the interest shifting from one association to another, would not be then excluded, and it may result, as it has done in this case, in one association succeeding another as party to the dispute. Such consequences are not desirable, and can be avoided only by insistence on the community of interest between the aggrieved party and his association being existent at the time the event causing the dispute had happened. That apart, we feel that in any fair determination of whether a dispute be trade or individual some date will have to be fixed. It is equally clear that such a date must be approximate to the time the act complained against has happened. The approximate date must further not be such as to allow the plea that the dispute originally concerned individuals. It follows that any hiatus between the end of the act and arising of interest, must be avoided and, that we think can only be by insisting on the community of interest not arising at a later date. Therefore, in determining whether the dispute be trade dispute or otherwise, the material time is when the act complained against has happened, and not when the dispute is referred. Because of the aforesaid reason, we agree with the learned Judge in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, where the fact of subsequent dosing of the industry, was taken as immaterial for judging the legality of the reference to the industrial tribunal. The advocate for the tribunal has insisted that, being a member of the union, is necessary only at the time the dispute is raised, and this is covered by the observation of the Supreme Court in *D.N. Banerji v. P.R. Mukherji* 1953 I L.L.J. 195 at 199. There the words used are:

by the trade union of which he is a member and there is a concerted demand by the employees for redress.

We think the membership referred to in the aforesaid observation, means one existing at the time the act complained against had happened, and not one springing after a gap. In this appeal the association's community of interest had arisen after sufficient time has elapsed, and cannot be held to be one existing when the act happened. For these reasons we think that the appellant's advocate's second argument should be accepted.

We, therefore, allow the appeal and the writ petition. The award of the industrial tribunal is vacated on the ground that the dispute is not industrial and could not be referred to the tribunal. Parties will bear their costs.