
(1963) 06 CAL CK 0017
In the Calcutta High Court
Case No : A.F.O.O. No. 51 of 1961

Sriniwas Fatehpuria Private Ltd.

APPELLANT

Vs

N.C. Chatterjee and Others

RESPONDENT

Date of Decision : 07-06-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : AIR 1963 Cal 548

Hon'ble Judges : G.K. Mitter, J;D.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sinha, J.—This is an appeal against an order of Ray, J., dated January 5, 1961, whereby the application was dismissed with costs.

2. The facts in this case are shortly as follows: The appellant is a Company which carries on the business of hiring certain barges and boats which are let out on a contract basis to manjhis, who in their turn appoint dandis under them. The appellant Company dismissed four workmen who were all manjhis. An industrial dispute arose between the said Company and the four workmen, which was referred by the Government of West Bengal for industrial adjudication under Sections 7 and 10 of the Industrial Disputes Act, 1947, before the First Labour Court. The Issue that was referred was as follows :

"Whether the dismissal of the following workmen is justified? To what relief, if any, are they entitled?

- (1) Matin Manjhi,
- (2) Khalil Manjhi,
- (3) Taslim Manjhi,
- (4) All Hasan."

I have already stated that the Company carried on an industry of the nature mentioned above. It is the owner of about 32 barges, 8 wooden boats and 2 launches of various sizes. These they hire out to about 40 manjhis, who in their turn appoint about 170 dandis. It is alleged that the 4 manjhis abovementioned, joined a union known as the "Calcutta Boatman Union". On or about October 1, 1958, orders were served upon these 4 workmen, dismissing them from service, for certain alleged mis-conduct. The workmen did not accept their orders of dismissal and complained that they were illegal and unjustified and amounted to an attempt at victimisation.

3. In their written statement before the Tribunal, the Company alleged that these 4 manjhis were really not workmen at all, but were mere contractors, and the Company did not exercise any control over them. It was stated that the Company lost confidence in these contractors and terminated their contracts. The second point taken was that in any event, the dispute between these 4 workmen and the Company was an individual dispute, and did not amount to an industrial dispute. Consequently the validity of the Order of Reference was challenged.

4. Before the Tribunal two Issues were raised. The first was whether the alleged workmen were contractors, and if so, was the Reference maintainable. The second was as to whether this was an industrial dispute.

5. So far as the first point is concerned, the Tribunal has held against the contention of the employers and the matter is not canvassed before us. On the second point, the Tribunal held that the dispute was not an individual dispute but an industrial dispute within the meaning of the Industrial Disputes Act, 1947, and that the Order of Reference was perfectly competent. It is this finding that was challenged before the Court below and before us.

6. The learned Judge below referred to a Supreme Court decision *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . The learned Judge said as follows :

"In the decision of *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, , it has been held that there can be an industrial dispute if it is taken up by a Union of the industry or the workmen of the company. In the present case the dispute was about four workmen of the petitioner. Counsel for the petitioner contended that unless a substantial number of workmen of the petitioner took part in the dispute and made it the collective dispute of the workmen of the petitioner it would not be an industrial dispute within the meaning of the Act. The Calcutta Boatman Union is a union of the industry of boatmen. Membership of that Union is open to persons engaged in the industry of Boatmen. In my opinion the Calcutta Boatman Union has not merely the right to represent the workmen of the petitioner but also the right to espouse the dispute of the workmen of the petitioner by making it a collective dispute because it is a union of the industry which is carried on by the petitioner. It is a Union which can legitimately raise disputes on part of persons who are members of the Union or

on part of workmen of the Industry of which it is a Union."

7. With respect, I do not think that the learned Judge has applied, the correct principle. This question has been the subject-matter of a number of decisions. The first decision to be cited is that of *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . This case, and a number of other cases, were considered by me in *Re Express Newspapers (Private) Ltd. Vs. First Labour Court West Bengal and Others*, . I pointed out that it is true that in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, Kapur, J. remarked that the case of the workmen had not been taken up "by any Union of workers of the appellant Company nor by any of the Unions of workmen employed in similar or allied trades", but the learned Judge could not have meant that the workman of a particular industry could under all circumstances be adequately represented by a union, not of its own workmen, but unconnected with them, so as to convert an individual dispute into an industrial dispute. If, however, a large number of workmen of the industry concerned, or a majority of workmen of such an industry, become members of such a union, then in that event, such a union may by its support convert an individual dispute into an industrial dispute. I pointed out that Kapur, J. in the operative part of the judgment has expressed a view consistent with tile above, but a view which would not be consistent, if the broader interpretation is given, viz., that any union whatsoever, is capable of such representation, although it may not be a union of the industry concerned, or may not have on its rolls a sufficient number of workmen belonging to the particular industry concerned.

8. This view now finds clear support from a decision of the Supreme Court, *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, . In that case, the short facts were as follows : The "Hindu", Bombay, was a journalistic adventure (referred to as the "employer"). It had on its staff at Bombay, four working journalists, including one Salivaieeswaran, end five other employees. He claimed to be a full time employee of the said employer, and in March, 1956, he proposed to proceed to Europe. The employer objected to this, and informed him that he dad ceased to be a correspondent or the "Hindu" from March 1, 1956. Thereupon, the said employee raised a dispute. As stated above, the total number of employees of the said employer was about nine in number, including the said journalist. It had no union of its own. Two of the journalists were members of the "Bombay Union of Journalists". The Bombay Union of Journalists was a trade union, the membership of which was open to all persons who depended for their livelihood upon the practice and profession of journalism, including press photographers, artists, cartoonists and free-lance writers. The question that arose was whether this individual dispute between the employer and Salivateeswaran had been turned into an industrial dispute, because his case was taken up by this Union, viz., the Bombay Union of Journalists. The matter ultimately went to the Supreme Court, and it was negatived. Shah, J. said as follows :

"The dispute, in the present case, being prima facie, an individual dispute, in order that it may become an industrial dispute it had to be established that it had been taken up by the Union of employees of "The Hindu", Bombay, or by an appreciable number of employees of "The Hindu", Bombay. By its constitution the Bombay Union of Journalists is a Union not of employees of one employer, but of all employees in the industry of journalism in Bombay. Support of the cause, by the Union, will not in our judgment convert the individual dispute of one of its members into an industrial dispute. In the present case members of the Union who were not workmen of the employer against whom the dispute was sought to be raised, seek by supporting the dispute to convert what is prima facie an individual dispute into an industrial dispute. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view applies to this class of cases also; persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. The mere support to his cause by the Bombay Union of Journalists cannot therefore assist the claim of Salivateeswaran so as to convert it into an industrial dispute."

The law therefore is that an outside union can, by supporting an individual workman, convert an individual dispute into an industrial dispute, only if a large number of workmen of the industrial unit concerned in the dispute, or a majority of them are members of such a union : (See-- Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, .

9. This being the law on the subject, let us consider the facts of the present case. I have already mentioned above that the workmen dismissed were 4 manjhis out of a total number of 40 manjhis and 170 dandis. It is admitted that the Calcutta Boatman Union is not a union of the industrial unit carried on by the employer. On the question as to whether these 4 manjhis were members of the said union, there was some dispute. It was said that, although they became members at one time, they failed to pay their membership subscription for six months, and therefore, under the rules of the union, they ceased to be members. I do not think it is necessary to consider this aspect in more detail. I shall assume that these workmen were in fact members of the Calcutta Boatman Union. Applying the test given above, that would not enable the said union to convert the dispute between such workmen and the employer into an industrial dispute. The further requirement is that a large number of the workmen, or a majority of workmen in the business or industrial unit carried on by the employer should be members of the said union. On this point there was conflicting evidence before the tribunal.

10. One of the manjhis, by the name of Matin Manjhi (respondent No. 2 in this case) gave evidence and denied that he was a member or that a large number of workmen of the employer were members of the union. An affidavit was filed affirmed by several workmen, in which they denied that they were members. On the contrary, a book was produced, stated to be a register of the members of the

said union (marked as exhibit 4), This is said to contain a large number of names of workmen of the employer. No one came forward to prove this book or its contents.

11. Now, I could have understood if upon a consideration of all the evidence, the Labour Court had come to the conclusion that, as a matter of fact, a large number of workmen belonging to the employer were members of industry carried on by the employer. That, however, is not what it has done. In deciding Issue No. 2, viz., as to whether the dispute was an industrial dispute or not, the Labour Court referred to my decision in *Re Express Newspapers (Private) Ltd. Vs. First Labour Court West Bengal and Others*, and correctly laid down the test, viz., as to whether a majority or a large portion of the workmen employed in the industry were concerned in the dispute or not. In applying the test, however, the Labour Court went wrong. It appears to have thought that the word "industry" meant the class of industry carried on by the employer, it proceeded to state as follows :

"The Union has produced the Union's membership register (Ext. 3) showing more than 1000 members in its rolls (i.e. 1186 members), and so these members of the Union as a whole took up the dispute collectively. This is sufficient to constitute the dispute an industrial dispute."

The Labour Court then proceeds to hold that because these four workmen, concerned in the industrial adjudication, ceased to be members of the union by reason of nonpayment of subscription, that did not affect the character of the dispute as industrial dispute. The Labour Court said as follows:

"Even if they were not members at all of the Calcutta Boatman Union, but If their cases were taken up collectively by this Union that would be sufficient to constitute the dispute as an industrial dispute."

12. It is obvious that the Labour Court failed to appreciate the real significance of the test that has to be applied, which has been explained by the Supreme Court and in my decision cited above. Whether the Union has 1000 or 10,000 members upon its rolls is irrelevant. Since it is not a union of the industry concerned, by which is meant the particular industrial unit carried on by the employer, it is absolutely necessary to show that a large number of workmen belonging to that particular industry, or a majority of them, are members of such union. It is only then, that such union, in taking up the case of a dismissed workman can convert an individual dispute into an industrial dispute. It is not for us to decide the facts, disputed as they are, but we must see that the Labour Court applies the correct test; otherwise, the conclusion is not in accordance with law. It seems to me that an error of law appears on the face of the Award, and therefore, it must be quashed by a writ in the nature of certiorari.

13. Coming now to the judgment of the Court below, I regret to say that the learned Judge made the same mistake. He considered the word "industry" in the larger sense. In the instant case, the reference was not industrywise, and

therefore, in applying the test mentioned above, the word "industry" means a particular unit, viz., the industrial unit in which the workmen were employed. The learned Judge says that as the union carried on the same kind of industry, it has got the right to represent the work men. This is an erroneous view of the law and therefore, the mistake committed by the Labour Court was not rectified.

14. The result is that the judgment of the Court below cannot be supported and this appeal must succeed and the order of the learned Judge, dated January 5, 1961, must be set aside. There should issue a writ of certiorari quashing the Award of the First Labour Court, Government of West Bengal, dated March 7, 1960.

15. The appellant is entitled to the costs of this appeal. Certified for two Counsel.

16. Mitter, J.

I agree.